



Montana Legislative History

Chapter: 391 Session L: 2017

Bill Number: Senate Bill 63

Checklist of Bill History

History and Final Status Sheet	X
Introduced Bill	X
Fiscal Note	X
Third Reading Bill	X
Final Version of Bill	X

House

Committee:
Judiciary
Appropriations

Hearing Date(s):

[February 16, 2017](#)

(Judiciary)

[March 10, 2017](#)

(Judiciary-Executive
Action)

[March 21, 2017](#)

(Appropriations
Hearing)

[April 3, 2017](#)

(Appropriations
Executive Action)

Senate

Committee: Judiciary

Hearing Date(s):

[January 17, 2017](#) (Hearing)

[January 25, 2017](#) (Executive Action)

Conference Committee

Hearing Date(s):

[April 12, 2017](#) (Senate Free Conference)

Compiler Notes

Compiled by:

Sonia Gavin

Date: May 2, 2024

Notes:

Bill Draft Number: LC0559

Bill Type - Number: SB 63

Short Title: Revise laws related to supervision of offenders/defendants

Primary Sponsor: Cynthia Wolken (D) SD 48

Chapter Number: 391

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 71

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	05/19/2017			
(S) Signed by Governor	05/19/2017			
(S) Transmitted to Governor	05/17/2017			
(H) Signed by Speaker	05/10/2017			
(S) Signed by President	05/04/2017			
(C) Printed - Enrolled Version Available	04/26/2017			
(S) Returned from Enrolling	04/25/2017			
(C) Printed - New Version Available	04/25/2017			
(S) Sent to Enrolling	04/24/2017			
(H) 3rd Reading Free Conference Committee Report Adopted	04/21/2017	95	5	
(H) Scheduled for 3rd Reading	04/21/2017			
(H) 2nd Reading Free Conference Committee Report Adopted	04/20/2017	95	2	
(H) Scheduled for 2nd Reading	04/20/2017			
(S) 3rd Reading Free Conference Committee Report Adopted	04/19/2017	50	0	
(S) Scheduled for 3rd Reading	04/19/2017			
(S) 2nd Reading Free Conference Committee Report Adopted	04/18/2017	49	0	
(S) Scheduled for 2nd Reading	04/18/2017			
(S) Free Conference Committee Report Received	04/12/2017			(S) Free Conference
(H) Free Conference Committee Report Received	04/12/2017			
(S) Hearing	04/12/2017			(S) Free Conference
(H) Free Conference Committee Appointed	04/12/2017			(H) Free Conference
(S) Free Conference Committee Appointed	04/11/2017			(S) Free Conference
(S) 2nd Reading House Amendments Not Concurred	04/11/2017	50	0	
(S) Scheduled for 2nd Reading	04/11/2017			
(H) Returned to Senate with Amendments	04/06/2017			
(H) 3rd Reading Concurred	04/06/2017	100	0	
(H) Scheduled for 3rd Reading	04/06/2017			
(H) 2nd Reading Concurred	04/05/2017	99	1	

(H) Scheduled for 2nd Reading	04/05/2017		
(C) Printed - New Version Available	04/04/2017		
(H) Committee Report--Bill Concurred as Amended	04/04/2017		(H) Appropriations
(H) Committee Executive Action--Bill Concurred as Amended	04/03/2017	22	0 (H) Appropriations
(H) Hearing	03/21/2017		(H) Appropriations
(H) Rereferred to Committee	03/13/2017		(H) Appropriations
(H) 2nd Reading Concurred	03/13/2017	95	5
(H) Scheduled for 2nd Reading	03/13/2017		
(H) Committee Report--Bill Concurred	03/10/2017		(H) Judiciary
(H) Committee Executive Action--Bill Concurred	03/10/2017	19	0 (H) Judiciary
(H) Hearing	02/16/2017		(H) Judiciary
(H) First Reading	02/06/2017		(H) Judiciary
(H) Referred to Committee	02/06/2017		(H) Judiciary
(S) Transmitted to House	02/02/2017		
(S) 3rd Reading Passed	02/02/2017	49	0
(S) Scheduled for 3rd Reading	02/02/2017		
(S) 2nd Reading Passed	02/01/2017	49	0
(S) Scheduled for 2nd Reading	02/01/2017		
(S) Committee Report--Bill Passed as Amended	01/26/2017		(S) Judiciary
(C) Printed - New Version Available	01/26/2017		
(S) Committee Executive Action--Bill Passed as Amended	01/25/2017	11	0 (S) Judiciary
(S) Hearing	01/17/2017		(S) Judiciary
(S) Fiscal Note Printed	01/09/2017		
(S) Fiscal Note Signed	01/04/2017		
(S) Fiscal Note Received	01/04/2017		
(S) First Reading	01/02/2017		
(S) Referred to Committee	12/29/2016		(S) Judiciary
(S) Fiscal Note Requested	12/16/2016		
(C) Introduced Bill Text Available Electronically	12/15/2016		
(S) Introduced	12/15/2016		
(C) Pre-Introduction Letter Sent	12/07/2016		
(C) Draft in Assembly	12/07/2016		
(C) Executive Director Review	12/06/2016		
(C) Bill Draft Text Available Electronically	12/06/2016		
(C) Draft in Final Drafter Review	12/06/2016		
(C) Draft in Input/Proofing	12/01/2016		
(C) Draft to Drafter - Edit Review [SMH]	11/28/2016		
(C) Draft in Edit	11/22/2016		
(C) Draft in Legal Review	11/21/2016		
(C) Fiscal Note Probable	11/21/2016		
(C) Draft to Requester for Review	11/21/2016		
(C) Fiscal Note Probable	11/21/2016		
(C) Draft Request Received	10/20/2016		

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name Mi
Requester	Commission on Sentencing	
Drafter	Weiss	Rachel
By Request Of	Commission on Sentencing	
Primary Sponsor	Wolken	Cynthia

Subjects

Description	Revenue/Approp. Vote Majority Req.	Subject Code
Corrections	Simple	CORR
Courts (see also: Judges and Justices; Juries and Jurors)	Simple	CORT

Additional Bill Information

Fiscal Note Probable: Yes
Preintroduction Required: Y
Session Law Ch. Number: 391
DEADLINE
Category: General Bills
Transmittal Date: 03/01/2017
Return (with 2nd house amendments) Date: 04/06/2017

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	19-MAY-17	

Section 16. Termination. [Sections 3 and 4] terminate June 30, 2019.
Approved May 19, 2017

CHAPTER NO. 391

[SB 63]

AN ACT REVISING LAWS RELATED TO SUPERVISION OF PROBATIONERS AND OF DEFENDANTS SERVING A DEFERRED OR SUSPENDED SENTENCE; REVISING THE PROCESS TO REVOKE A DEFERRED OR SUSPENDED SENTENCE FOR VIOLATIONS OF CONDITIONS; ALLOWING A PROBATION AND PAROLE OFFICER TO FILE A PETITION TO TERMINATE THE TIME REMAINING ON A DEFERRED OR SUSPENDED SENTENCE; CREATING A DEADLINE AFTER WHICH THE DEFERRED OR SUSPENDED SENTENCE IS TERMINATED; CREATING A SCHEDULE FOR CONDITIONAL DISCHARGE RECOMMENDATIONS FOR PROBATIONERS; REVISING PROCEDURES FOR AN INFORMAL PROBATION VIOLATION HEARING; REQUIRING THE DEPARTMENT OF CORRECTIONS TO IMPLEMENT AN INCENTIVES AND INTERVENTIONS GRID; REQUIRING THE DEPARTMENT TO PROVIDE TRAINING RELATED TO THE INCENTIVES AND INTERVENTIONS GRID; PROVIDING DEFINITIONS; AMENDING SECTIONS 46-18-203, 46-18-208, 46-23-1011, 46-23-1015, AND 53-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-203, MCA, is amended to read:

“46-18-203. Revocation of suspended or deferred sentence. (1) Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence, any condition of a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), *and describing the exhaustion and documentation in the offender’s file of appropriate violation responses according to the incentives and interventions grid adopted under 53-1-203*, the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court either before the period of suspension or deferral has begun or during the period of suspension or deferral but not after the period has expired. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay *and no more than 60 days after arrest*, the offender must be brought before the judge, and *at least 10 days prior to the hearing* the offender must be advised of:

- (a) the allegations of the petition;
- (b) the opportunity to appear and to present evidence in the offender’s own behalf;

(c) the opportunity to question adverse witnesses; and
(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified unless:

(a) the offender admits the allegations and waives the right to a hearing; or
(b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of:

(i) the terms and conditions of the suspended or deferred sentence; or
(ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4).

(b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence *and the violation is not a compliance violation*, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions, *which may include placement in:*

(A) *a secure facility designated by the department for up to 9 months; or*

(B) *a community corrections facility or program designated by the department for up to 9 months, including but not limited to placement in a prerelease center, sanction or hold bed, transitional living program, enhanced supervision program, relapse intervention bed, chemical dependency treatment, or 24/7 sobriety program;*

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any sentence that could have been imposed that does not include a longer imprisonment or commitment term than the original sentence; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time, *consult the records and recollection of the probation and parole officer, and either expressly allow all or part of the elapsed time served without any record or recollection of violations as a credit against the sentence or reject all or part of the time as a credit. The If the judge determines that elapsed time should not be credited, the judge shall state the reasons for the judge's determination in the order.* Credit must be allowed for time served in a detention center or for home arrest time already served.

(c) If ~~a~~ the judge finds that ~~an~~ the offender has not violated a term or condition of a suspended or deferred sentence, ~~that~~ the judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) (a) *Except as provided in subsection (8)(c), if the judge finds that the offender has violated the terms and conditions of the suspended or deferred*

sentence, that the violation is a compliance violation, and that the appropriate violation responses under the incentives and interventions grid have not been exhausted and documented in the offender's file, the judge shall notify the department and refer the matter back to the hearings officer.

(b) Except as provided in subsection (8)(c), if the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the appropriate violation responses under the incentives and interventions grid have been exhausted and documented in the offender's file, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions; or

(ii) continue the suspended or deferred sentence with modified or additional terms and conditions, which may include placement as provided in subsection (7)(a)(ii).

(c) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the offender's conduct indicates that the offender will not be responsive to further efforts under the incentives and interventions grid, the judge may sentence the offender as provided in subsection (7).

(8)(9) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released.

(10) All sanction and placement decisions must be documented in the offender's file.

(11) As used in this section, the following definitions apply:

(a) "Absconding" means when an offender deliberately makes the offender's whereabouts unknown to a probation and parole officer or fails to report for the purposes of avoiding supervision, and reasonable efforts by the probation and parole officer to locate the offender have been unsuccessful.

(b) "Compliance violation" means a violation of the conditions of supervision that is not:

(i) a new criminal offense;

(ii) possession of a firearm in violation of a condition of probation;

(iii) behavior by the offender or any person acting at the offender's direction that could be considered stalking, harassing, or threatening the victim of the offense or a member of the victim's immediate family or support network;

(iv) absconding; or

(v) failure to enroll in or complete a required sex offender treatment program or a treatment program designed to treat violent offenders.

(9)(12) The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence."

Section 2. Section 46-18-208, MCA, is amended to read:

"46-18-208. Termination of remaining portion of deferred or suspended sentence – petition. (1) When imposition of a sentence has been deferred or execution of a sentence has been suspended, the prosecutor, or the defendant, or the defendant's probation and parole officer may file a petition to terminate the time remaining on the sentence if:

(a) in the case of a deferred imposition of sentence, the defendant has served 2 years or one-half of the sentence, whichever is less, and has demonstrated compliance with supervision requirements; or

(b) in the case of a suspended sentence:

(i) the defendant has served 3 years or two-thirds of the time suspended, *whichever is less*; and

(ii) the defendant has been granted a conditional discharge from supervision under 46-23-1011 and has demonstrated compliance with the conditional discharge for a minimum of 12 months.

(2) The court may hold a hearing on the petition on its own motion or ~~upon~~ on request of the prosecutor or the defendant. *Unless the court requires a hearing, the remaining portion of the deferred or suspended sentence is terminated 30 days after the petition is filed.*

(3) ~~The~~ *If the court requires a hearing on the petition, the* court may grant the petition if it finds that:

(a) termination of the remainder of the sentence is in the best interests of the defendant and society;

(b) termination of the remainder of the sentence will not present an unreasonable risk of danger to the victim of the offense; and

(c) the defendant has paid all restitution and court-ordered financial obligations in full.”

Section 3. Section 46-23-1011, MCA, is amended to read:

“46-23-1011. Supervision on probation. (1) The department shall supervise probationers during their probation period, including supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), in accord with the conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

(2) If the probationer is being supervised for a sexual offense as defined in 46-23-502, the conditions of probation may require the probationer to refrain from direct or indirect contact with the victim of the offense or an immediate family member of the victim. If the victim or an immediate family member of the victim requests to the department that the probationer not contact the victim or immediate family member, the department shall request a hearing with a sentencing judge and recommend that the judge add the condition of probation. If the victim is a minor, a parent or guardian of the victim may make the request on the victim’s behalf.

(3) A copy of the conditions of probation must be signed by the probationer. The department may require a probationer to waive extradition for the probationer’s return to Montana.

(4) The probation and parole officer shall regularly advise and consult with the probationer *using effective communication strategies and other evidence-based practices* to encourage the probationer to improve the probationer’s condition and conduct and shall inform the probationer of the restoration of rights on successful completion of the sentence.

(5) (a) The probation and parole officer may recommend and a judge may modify or add any condition of probation or suspension of sentence at any time.

(b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with a report that identifies the conditions of probation and the reason why the officer believes that the judge should modify or add the conditions.

(c) The county attorney may file a petition requesting that the court modify or add conditions as requested by the probation and parole officer.

(d) The court may grant the petition if the probationer does not object. If the probationer objects to the petition, the court shall hold a hearing pursuant to the provisions of 46-18-203.

(e) Except as they apply to supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), the provisions of 46-18-203(7)(a)(ii) do not apply to this section.

(f) The probationer shall sign a copy of new or modified conditions of probation. The court may waive or modify a condition of restitution only as provided in 46-18-246.

(6) (a) *Based on the risk and needs of each individual as determined by the individual's most recent risk and needs assessment, the probation and parole officer shall recommend conditional discharge when a probationer is in compliance with the conditions of supervision when:*

- (i) *a low-risk probationer has served 9 months;*
- (ii) *a medium-risk probationer has served 12 months;*
- (iii) *a moderate-risk probationer has served 18 months; and*
- (iv) *a high-risk probationer has served 24 months.*

(b) On recommendation of the probation and parole officer, a judge may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if:

(i) the judge determines that a conditional discharge from supervision:

(A) is in the best interests of the probationer and society; and

(B) will not present unreasonable risk of danger to the victim of the offense; and

(ii) the offender has paid all restitution and court-ordered financial obligations in full.

~~(b)(c) Subsection (6)(a) (6)(b) does not prohibit a judge from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.~~

~~(c) If the department certifies to the sentencing judge that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the judge may not place an offender on probation under supervision by that district office unless the judge grants a conditional discharge to a probationer being supervised by that district office. The department may recommend probationers to the judge for conditional discharge. The judge may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."~~

Section 4. Section 46-23-1015, MCA, is amended to read:

"46-23-1015. Informal probation violation intervention hearing. (1)

A probation and parole officer who reasonably believes that a probationer has violated a condition of probation *shall consult the incentives and interventions grid adopted under 53-1-203 to determine an appropriate response and* may initiate an informal probation violation intervention hearing to gain the probationer's compliance with the conditions of probation without a formal revocation hearing under 46-18-203.

(2) A hearings officer designated by the department shall conduct the intervention hearing.

(3) If the hearings officer determines by a preponderance of the evidence that the probationer has violated a condition of probation, the hearings officer may order the probationer to serve up to 30 days in a county detention center, with credit for time served since the time of arrest, or order the probationer to

~~participate in a day reporting program as provided for in 53-1-203 and order the probationer to pay the costs of incarceration or participation in the day reporting program. The department shall pay the incarceration costs not paid by the probationer shall consult the incentives and interventions grid and determine an appropriate response, including whether to:~~

~~(a) order the probationer to serve, or receive credit for serving, up to 30 days in detention;~~

~~(b) recommend electronic monitoring or day reporting for up to a 90-day period;~~

~~(c) recommend placement in a community corrections facility or program for up to a 90-day period, including but not limited to placement in a prerelease center, sanction or hold bed, transitional living program, enhanced supervision program, relapse intervention bed, chemical dependency treatment, or 24/7 sobriety program; or~~

~~(d) direct the probation and parole officer to initiate a petition for revocation under 46-18-203, if the violation is not a compliance violation or if it is a compliance violation and appropriate responses under the incentives and interventions grid have been exhausted.~~

~~(4) If the hearings officer recommends a response under subsection (3)(b), the hearings officer shall notify the probationer of the recommendation and of the probationer's right to instead have the matter referred by petition for a revocation hearing under 46-18-203.~~

~~(4)(5) The provisions of chapter 9 of this title regarding release on bail of a person charged with a crime are not applicable do not apply to a probationer ordered to be held in a county detention center or other facility under this section.~~

~~(6) All sanction and placement decisions must be documented in the offender's file."~~

Section 5. Section 53-1-203, MCA, is amended to read:

"53-1-203. Powers and duties of department of corrections. (1) The department of corrections shall:

(a) subject to subsection (6), adopt rules necessary:

(i) to carry out the purposes of 41-5-125;

(ii) for the siting, establishment, and expansion of prerelease centers;

(iii) for the expansion of treatment facilities or programs previously established by contract through a competitive procurement process;

(iv) for the establishment and maintenance of residential methamphetamine treatment programs; and

(v) for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law;

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations or, pursuant to the Montana Community Corrections Act, with community corrections facilities or programs or local or tribal governments to establish and maintain:

(i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for release into the community, providing an alternative placement for offenders who have violated parole or probation, and providing a sentencing option for felony offenders

pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs. This subsection does not affect the department's authority to operate and maintain prerelease centers.

(ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for persons convicted of possession of methamphetamine. The department shall issue a request for proposals using a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

(d) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed in correctional facilities or programs;

(f) encourage the establishment of programs at the local and state level for the rehabilitation and education of felony offenders;

(g) administer all state and federal funds allocated to the department for delinquent youth, as defined in 41-5-103;

(h) collect and disseminate information relating to youth who are committed to the department for placement in a state youth correctional facility;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to delinquent youth in out-of-home care facilities;

(j) provide funding for youth who are committed to the department for placement in a state youth correctional facility;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for delinquent youth committed to the department; and

(ii) coordinate and apply the principles of modern correctional administration to the facilities and programs administered by the department.

(2) The department may contract with private, nonprofit or for-profit Montana corporations to establish and maintain a residential sexual offender treatment program. If the department intends to contract for that purpose, the department shall adopt rules for the establishment and maintenance of that program.

(3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

(4) The department of ~~corrections~~ may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for delinquent youth in state youth correctional facilities or on juvenile parole supervision.

(5) The department may contract with Montana corporations to operate a day reporting program as an alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015. The department shall adopt by rule the requirements for a day reporting program, including but not limited to requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance with any conditions of probation, such as drug testing.

(6) Rules adopted by the department pursuant to subsection (1)(a) may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support for or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

(7) (a) *The department shall revise, maintain, and fully implement the policy known as the Montana incentives and interventions grid.*

(b) *The grid must:*

(i) *guide responses to negative and positive behavior by people under supervision by the department, including responses to violations of supervision conditions in a swift, certain, and proportional manner;*

(ii) *include guidance and procedures to determine when and how to:*

(A) *request a warrant or arrest without a warrant;*

(B) *use a 72-hour detention;*

(C) *initiate an intervention hearing;*

(D) *seek departmental approval to use up to 90-day interventions;*

(E) *exhaust and document violations responses before initiating the revocation process; and*

(F) *recommend the least restrictive placement for offenders based on the result of a validated risk and needs assessment. Placement decisions must be documented in the offender's file and must indicate any other less secure sanction options considered by the probation and parole officer before utilizing a higher level of custody.*

(8) *The department shall:*

(a) *review the grid every 5 years to ensure it adheres to evidence-based practices and that use of sanctions and incentives by probation and parole officers is consistent across the state;*

(b) *provide information and training on the grid for probation and parole officers and supervisors and for members and staff of the board of pardons and parole;*

(c) *offer information and training on the grid to district court judges, prosecution and defense attorneys, law enforcement personnel, county detention center personnel, contracted service providers, and other interested personnel;*

(d) *ensure the guidance and procedures established in the grid give consideration to community safety and the needs of the victim and offender;*

(e) *collect data relating to placement decisions based on the grid; and*

(f) aggregate data collected and provide a report to the law and justice interim committee each biennium.”

Section 6. Effective date. [This act] is effective on passage and approval.

Approved May 19, 2017

CHAPTER NO. 392

[SB 64]

AN ACT GENERALLY REVISING LAWS RELATED TO THE BOARD OF PARDONS AND PAROLE; REVISING THE BOARD'S SIZE AND STRUCTURE; PROVIDING THAT THE BOARD IS A FULL-TIME BOARD; REVISING THE QUALIFICATIONS AND COMPENSATION OF BOARD MEMBERS; PROHIBITING A BOARD DESIGNEE FROM PERFORMING CERTAIN ACTS; REVISING THE LENGTH OF TIME THE BOARD MAY ORDER A PRISONER TO SERVE BEFORE ANOTHER HEARING OR REVIEW AFTER A PAROLE DENIAL; REVISING WHEN THE BOARD MAY ASSIGN CONDITIONS OF PAROLE; REVISING THE BOARD'S RULEMAKING AUTHORITY; REQUIRING THE DEPARTMENT OF CORRECTIONS AND THE BOARD TO COLLECT AND REPORT CERTAIN DATA; REVISING SUPERVISION AND REVOCATION PROCEDURES; REQUIRING THE BOARD TO REVIEW CERTAIN ADMINISTRATIVE RULES AND REPORT TO THE LAW AND JUSTICE INTERIM COMMITTEE; AMENDING SECTIONS 46-23-103, 46-23-104, 46-23-110, 46-23-201, 46-23-202, 46-23-208, 46-23-215, 46-23-218, 46-23-1001, 46-23-1003, 46-23-1021, 46-23-1023, 46-23-1024, AND 46-23-1025, MCA; REPEALING SECTION 2-15-2302, MCA; PROVIDING A TRANSITION SCHEDULE; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Montana board of pardons and parole -- composition and qualifications -- allocation -- quasi-judicial. (1) There is a board of pardons and parole consisting of five members.

(2) Board members must possess at least one of the following qualifications:

(a) a college degree in criminology, corrections, or a related social science;

(b) at least 5 years of extensive work experience in corrections, the criminal justice system, or criminal law; or

(c) a law degree.

(3) Consideration should be given to balancing members' expertise or knowledge of:

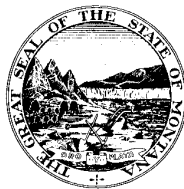
(a) American Indian culture;

(b) serious mental illness and recovery from serious mental illness; and

(c) victim awareness.

(4) Board members shall serve staggered 6-year terms. The terms of board members run with the position, and if a vacancy occurs, the governor shall appoint a person to fill the unexpired portion of the term.

(5) The governor shall designate the presiding officer, as provided in 2-15-124. The governor may designate a different presiding officer at any time. If the governor designates a different presiding officer, the former presiding officer still serves as a board member unless removed for cause pursuant to 2-15-124(6).



AN ACT REVISING LAWS RELATED TO SUPERVISION OF PROBATIONERS AND OF DEFENDANTS SERVING A DEFERRED OR SUSPENDED SENTENCE; REVISING THE PROCESS TO REVOKE A DEFERRED OR SUSPENDED SENTENCE FOR VIOLATIONS OF CONDITIONS; ALLOWING A PROBATION AND PAROLE OFFICER TO FILE A PETITION TO TERMINATE THE TIME REMAINING ON A DEFERRED OR SUSPENDED SENTENCE; CREATING A DEADLINE AFTER WHICH THE DEFERRED OR SUSPENDED SENTENCE IS TERMINATED; CREATING A SCHEDULE FOR CONDITIONAL DISCHARGE RECOMMENDATIONS FOR PROBATIONERS; REVISING PROCEDURES FOR AN INFORMAL PROBATION VIOLATION HEARING; REQUIRING THE DEPARTMENT OF CORRECTIONS TO IMPLEMENT AN INCENTIVES AND INTERVENTIONS GRID; REQUIRING THE DEPARTMENT TO PROVIDE TRAINING RELATED TO THE INCENTIVES AND INTERVENTIONS GRID; PROVIDING DEFINITIONS; AMENDING SECTIONS 46-18-203, 46-18-208, 46-23-1011, 46-23-1015, AND 53-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-203, MCA, is amended to read:

"46-18-203. Revocation of suspended or deferred sentence. (1) Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence, any condition of a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), and describing the exhaustion and documentation in the offender's file of appropriate violation responses according to the incentives and interventions grid adopted under 53-1-203, the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court either before the period of suspension or deferral has begun or during the period of suspension or deferral but not after the period has expired. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay and no more than 60 days after arrest, the offender must be brought before the judge, and at least 10 days prior to the hearing the offender must be advised of:

- (a) the allegations of the petition;
- (b) the opportunity to appear and to present evidence in the offender's own behalf;
- (c) the opportunity to question adverse witnesses; and
- (d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified unless:

- (a) the offender admits the allegations and waives the right to a hearing; or
- (b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of:

- (i) the terms and conditions of the suspended or deferred sentence; or
- (ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4).

(b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence and the violation is not a compliance violation, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions;
 (ii) continue the suspended sentence with modified or additional terms and conditions, which may include placement in:

(A) a secure facility designated by the department for up to 9 months; or

(B) a community corrections facility or program designated by the department for up to 9 months, including but not limited to placement in a prerelease center, sanction or hold bed, transitional living program, enhanced supervision program, relapse intervention bed, chemical dependency treatment, or 24/7 sobriety program;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any sentence that could have been imposed that does not include a longer imprisonment or commitment term than the original sentence; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time, consult the records and recollection of the probation and parole officer, and either expressly allow all or part of the elapsed time served without any record or recollection of violations as a credit against the sentence or reject all or part of the time as a credit. The ~~If the judge determines that elapsed time should not be credited, the judge shall state the reasons for the judge's determination in the order. Credit must be allowed for time served in a detention center or for home arrest time already served.~~

(c) If ~~a~~ the judge finds that ~~an~~ the offender has not violated a term or condition of a suspended or deferred sentence, ~~that~~ the judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) (a) Except as provided in subsection (8)(c), if the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the appropriate violation responses under the incentives and interventions grid have not been exhausted and documented in the offender's file, the judge shall notify the department and refer the matter back to the hearings officer.

(b) Except as provided in subsection (8)(c), if the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the appropriate violation responses under the incentives and interventions grid have been exhausted and

documented in the offender's file, the judge may:

- (i) continue the suspended or deferred sentence without a change in conditions; or
- (ii) continue the suspended or deferred sentence with modified or additional terms and conditions, which may include placement as provided in subsection (7)(a)(ii).

(c) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the offender's conduct indicates that the offender will not be responsive to further efforts under the incentives and interventions grid, the judge may sentence the offender as provided in subsection (7).

~~(8)~~(9) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released.

(10) All sanction and placement decisions must be documented in the offender's file.

(11) As used in this section, the following definitions apply:

(a) "Absconding" means when an offender deliberately makes the offender's whereabouts unknown to a probation and parole officer or fails to report for the purposes of avoiding supervision, and reasonable efforts by the probation and parole officer to locate the offender have been unsuccessful.

(b) "Compliance violation" means a violation of the conditions of supervision that is not:

- (i) a new criminal offense;
- (ii) possession of a firearm in violation of a condition of probation;
- (iii) behavior by the offender or any person acting at the offender's direction that could be considered stalking, harassing, or threatening the victim of the offense or a member of the victim's immediate family or support network;

(iv) absconding; or

(v) failure to enroll in or complete a required sex offender treatment program or a treatment program designed to treat violent offenders.

~~(9)~~(12) The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence."

Section 2. Section 46-18-208, MCA, is amended to read:

"46-18-208. Termination of remaining portion of deferred or suspended sentence -- petition. (1)

When imposition of a sentence has been deferred or execution of a sentence has been suspended, the prosecutor, ~~or the~~ defendant, ~~or the defendant's probation and parole officer~~ may file a petition to terminate the time remaining on the sentence if:

(a) in the case of a deferred imposition of sentence, the defendant has served 2 years or one-half of the sentence, whichever is less, and has demonstrated compliance with supervision requirements; or

(b) in the case of a suspended sentence:

(i) the defendant has served 3 years or two-thirds of the time suspended, whichever is less; and

(ii) the defendant has been granted a conditional discharge from supervision under 46-23-1011 and has demonstrated compliance with the conditional discharge for a minimum of 12 months.

(2) The court may hold a hearing on the petition on its own motion or ~~upon~~ on request of the prosecutor or the defendant. Unless the court requires a hearing, the remaining portion of the deferred or suspended sentence is terminated 30 days after the petition is filed.

(3) ~~The~~ If the court requires a hearing on the petition, the court may grant the petition if it finds that:

(a) termination of the remainder of the sentence is in the best interests of the defendant and society;

(b) termination of the remainder of the sentence will not present an unreasonable risk of danger to the victim of the offense; and

(c) the defendant has paid all restitution and court-ordered financial obligations in full."

Section 3. Section 46-23-1011, MCA, is amended to read:

"46-23-1011. Supervision on probation. (1) The department shall supervise probationers during their probation period, including supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), in accord with the conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

(2) If the probationer is being supervised for a sexual offense as defined in 46-23-502, the conditions of probation may require the probationer to refrain from direct or indirect contact with the victim of the offense or

an immediate family member of the victim. If the victim or an immediate family member of the victim requests to the department that the probationer not contact the victim or immediate family member, the department shall request a hearing with a sentencing judge and recommend that the judge add the condition of probation. If the victim is a minor, a parent or guardian of the victim may make the request on the victim's behalf.

(3) A copy of the conditions of probation must be signed by the probationer. The department may require a probationer to waive extradition for the probationer's return to Montana.

(4) The probation and parole officer shall regularly advise and consult with the probationer using effective communication strategies and other evidence-based practices to encourage the probationer to improve the probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful completion of the sentence.

(5) (a) The probation and parole officer may recommend and a judge may modify or add any condition of probation or suspension of sentence at any time.

(b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with a report that identifies the conditions of probation and the reason why the officer believes that the judge should modify or add the conditions.

(c) The county attorney may file a petition requesting that the court modify or add conditions as requested by the probation and parole officer.

(d) The court may grant the petition if the probationer does not object. If the probationer objects to the petition, the court shall hold a hearing pursuant to the provisions of 46-18-203.

(e) Except as they apply to supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), the provisions of 46-18-203(7)(a)(ii) do not apply to this section.

(f) The probationer shall sign a copy of new or modified conditions of probation. The court may waive or modify a condition of restitution only as provided in 46-18-246.

(6) (a) Based on the risk and needs of each individual as determined by the individual's most recent risk and needs assessment, the probation and parole officer shall recommend conditional discharge when a probationer is in compliance with the conditions of supervision when:

(i) a low-risk probationer has served 9 months;

(ii) a medium-risk probationer has served 12 months;

(iii) a moderate-risk probationer has served 18 months; and

(iv) a high-risk probationer has served 24 months.

(b) On recommendation of the probation and parole officer, a judge may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if:

(i) the judge determines that a conditional discharge from supervision:

(A) is in the best interests of the probationer and society; and

(B) will not present unreasonable risk of danger to the victim of the offense; and

(ii) the offender has paid all restitution and court-ordered financial obligations in full.

~~(b)(c)~~ Subsection ~~(6)(a)~~ (6)(b) does not prohibit a judge from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.

~~(c) If the department certifies to the sentencing judge that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the judge may not place an offender on probation under supervision by that district office unless the judge grants a conditional discharge to a probationer being supervised by that district office. The department may recommend probationers to the judge for conditional discharge. The judge may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."~~

Section 4. Section 46-23-1015, MCA, is amended to read:

"46-23-1015. Informal probation violation intervention hearing. (1) A probation and parole officer who reasonably believes that a probationer has violated a condition of probation shall consult the incentives and interventions grid adopted under 53-1-203 to determine an appropriate response and may initiate an informal probation violation intervention hearing to gain the probationer's compliance with the conditions of probation without a formal revocation hearing under 46-18-203.

(2) A hearings officer designated by the department shall conduct the intervention hearing.

(3) If the hearings officer determines by a preponderance of the evidence that the probationer has violated a condition of probation, the hearings officer ~~may order the probationer to serve up to 30 days in a county detention center, with credit for time served since the time of arrest, or order the probationer to participate in a day reporting program as provided for in 53-1-203 and order the probationer to pay the costs of incarceration or~~

~~participation in the day reporting program. The department shall pay the incarceration costs not paid by the probationer shall consult the incentives and interventions grid and determine an appropriate response, including whether to:~~

- ~~(a) order the probationer to serve, or receive credit for serving, up to 30 days in detention;~~
- ~~(b) recommend electronic monitoring or day reporting for up to a 90-day period;~~
- ~~(c) recommend placement in a community corrections facility or program for up to a 90-day period, including but not limited to placement in a prerelease center, sanction or hold bed, transitional living program, enhanced supervision program, relapse intervention bed, chemical dependency treatment, or 24/7 sobriety program; or~~
- ~~(d) direct the probation and parole officer to initiate a petition for revocation under 46-18-203, if the violation is not a compliance violation or if it is a compliance violation and appropriate responses under the incentives and interventions grid have been exhausted.~~

~~(4) If the hearings officer recommends a response under subsection (3)(b), the hearings officer shall notify the probationer of the recommendation and of the probationer's right to instead have the matter referred by petition for a revocation hearing under 46-18-203.~~

~~(4)(5) The provisions of chapter 9 of this title regarding release on bail of a person charged with a crime are not applicable do not apply to a probationer ordered to be held in a county detention center or other facility under this section.~~

~~(6) All sanction and placement decisions must be documented in the offender's file."~~

Section 5. Section 53-1-203, MCA, is amended to read:

"53-1-203. Powers and duties of department of corrections. (1) The department of corrections shall:

- (a) subject to subsection (6), adopt rules necessary:
 - (i) to carry out the purposes of 41-5-125;
 - (ii) for the siting, establishment, and expansion of prerelease centers;
 - (iii) for the expansion of treatment facilities or programs previously established by contract through a competitive procurement process;
 - (iv) for the establishment and maintenance of residential methamphetamine treatment programs; and
 - (v) for the admission, custody, transfer, and release of persons in department programs except as

otherwise provided by law;

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations or, pursuant to the Montana Community Corrections Act, with community corrections facilities or programs or local or tribal governments to establish and maintain:

(i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for release into the community, providing an alternative placement for offenders who have violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs. This subsection does not affect the department's authority to operate and maintain prerelease centers.

(ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for persons convicted of possession of methamphetamine. The department shall issue a request for proposals using a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

(d) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed in correctional facilities or programs;

(f) encourage the establishment of programs at the local and state level for the rehabilitation and education of felony offenders;

(g) administer all state and federal funds allocated to the department for delinquent youth, as defined in 41-5-103;

(h) collect and disseminate information relating to youth who are committed to the department for

placement in a state youth correctional facility;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to delinquent youth in out-of-home care facilities;

(j) provide funding for youth who are committed to the department for placement in a state youth correctional facility;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for delinquent youth committed to the department; and

(ii) coordinate and apply the principles of modern correctional administration to the facilities and programs administered by the department.

(2) The department may contract with private, nonprofit or for-profit Montana corporations to establish and maintain a residential sexual offender treatment program. If the department intends to contract for that purpose, the department shall adopt rules for the establishment and maintenance of that program.

(3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

(4) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for delinquent youth in state youth correctional facilities or on juvenile parole supervision.

(5) The department may contract with Montana corporations to operate a day reporting program as an alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015. The department shall adopt by rule the requirements for a day reporting program, including but not limited to requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance

with any conditions of probation, such as drug testing.

(6) Rules adopted by the department pursuant to subsection (1)(a) may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support for or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

(7) (a) The department shall revise, maintain, and fully implement the policy known as the Montana incentives and interventions grid.

(b) The grid must:

(i) guide responses to negative and positive behavior by people under supervision by the department, including responses to violations of supervision conditions in a swift, certain, and proportional manner;

(ii) include guidance and procedures to determine when and how to:

(A) request a warrant or arrest without a warrant;

(B) use a 72-hour detention;

(C) initiate an intervention hearing;

(D) seek departmental approval to use up to 90-day interventions;

(E) exhaust and document violations responses before initiating the revocation process; and

(F) recommend the least restrictive placement for offenders based on the result of a validated risk and needs assessment. Placement decisions must be documented in the offender's file and must indicate any other less secure sanction options considered by the probation and parole officer before utilizing a higher level of custody.

(8) The department shall:

(a) review the grid every 5 years to ensure it adheres to evidence-based practices and that use of sanctions and incentives by probation and parole officers is consistent across the state;

(b) provide information and training on the grid for probation and parole officers and supervisors and for members and staff of the board of pardons and parole;

(c) offer information and training on the grid to district court judges, prosecution and defense attorneys, law enforcement personnel, county detention center personnel, contracted service providers, and other interested personnel;

(d) ensure the guidance and procedures established in the grid give consideration to community safety and the needs of the victim and offender;

(e) collect data relating to placement decisions based on the grid; and

(f) aggregate data collected and provide a report to the law and justice interim committee each biennium."

Section 6. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 0063, originated in the Senate.

President of the Senate

Signed this _____ day
of _____, 2017.

Secretary of the Senate

Speaker of the House

Signed this _____ day
of _____, 2017.

SENATE BILL NO. 63

INTRODUCED BY C. WOLKEN

BY REQUEST OF THE COMMISSION ON SENTENCING

AN ACT REVISING LAWS RELATED TO SUPERVISION OF PROBATIONERS AND OF DEFENDANTS SERVING A DEFERRED OR SUSPENDED SENTENCE; REVISING THE PROCESS TO REVOKE A DEFERRED OR SUSPENDED SENTENCE FOR VIOLATIONS OF CONDITIONS; ALLOWING A PROBATION AND PAROLE OFFICER TO FILE A PETITION TO TERMINATE THE TIME REMAINING ON A DEFERRED OR SUSPENDED SENTENCE; CREATING A DEADLINE AFTER WHICH THE DEFERRED OR SUSPENDED SENTENCE IS TERMINATED; CREATING A SCHEDULE FOR CONDITIONAL DISCHARGE RECOMMENDATIONS FOR PROBATIONERS; REVISING PROCEDURES FOR AN INFORMAL PROBATION VIOLATION HEARING; REQUIRING THE DEPARTMENT OF CORRECTIONS TO IMPLEMENT AN INCENTIVES AND INTERVENTIONS GRID; REQUIRING THE DEPARTMENT TO PROVIDE TRAINING RELATED TO THE INCENTIVES AND INTERVENTIONS GRID; PROVIDING DEFINITIONS; AMENDING SECTIONS 46-18-203, 46-18-208, 46-23-1011, 46-23-1015, AND 53-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

1 SENATE BILL NO. 63

2 INTRODUCED BY C. WOLKEN

3 BY REQUEST OF THE COMMISSION ON SENTENCING

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO SUPERVISION OF

6 PROBATIONERS AND OF DEFENDANTS SERVING A DEFERRED OR SUSPENDED SENTENCE; REVISING

7 THE PROCESS TO REVOKE A DEFERRED OR SUSPENDED SENTENCE FOR VIOLATIONS OF

8 CONDITIONS; ALLOWING A PROBATION AND PAROLE OFFICER TO FILE A PETITION TO TERMINATE

9 THE TIME REMAINING ON A DEFERRED OR SUSPENDED SENTENCE; CREATING A DEADLINE AFTER

10 WHICH THE DEFERRED OR SUSPENDED SENTENCE IS TERMINATED; CREATING A SCHEDULE FOR

11 CONDITIONAL DISCHARGE RECOMMENDATIONS FOR PROBATIONERS; REVISING PROCEDURES FOR

12 AN INFORMAL PROBATION VIOLATION HEARING; REQUIRING THE DEPARTMENT OF CORRECTIONS

13 TO IMPLEMENT AN INCENTIVES AND INTERVENTIONS GRID; REQUIRING THE DEPARTMENT TO

14 PROVIDE TRAINING RELATED TO THE INCENTIVES AND INTERVENTIONS GRID; PROVIDING

15 DEFINITIONS; AND AMENDING SECTIONS 46-18-203, 46-18-208, 46-23-1011, 46-23-1015, AND 53-1-203,

16 MCA."

17

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19

20 **Section 1.** Section 46-18-203, MCA, is amended to read:

21 **"46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for

22 revocation showing probable cause that the offender has violated any condition of a sentence, any condition of

23 a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed

24 pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), and describing

25 the exhaustion of appropriate violation responses according to the incentives and interventions grid adopted

26 under 53-1-203, the judge may issue an order for a hearing on revocation. The order must require the offender

27 to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and

28 order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a

29 probation and parole officer to arrest the offender and bring the offender before the court.

30 (2) The petition for a revocation must be filed with the sentencing court either before the period of

1 suspension or deferral has begun or during the period of suspension or deferral but not after the period has
2 expired. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of
3 its jurisdiction to rule on the petition.

4 (3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested
5 pursuant to this section.

6 (4) Without unnecessary delay and no more than 60 days after arrest, the offender must be brought
7 before the judge, and at least 10 days prior to the hearing the offender must be advised of:

8 (a) the allegations of the petition;

9 (b) the opportunity to appear and to present evidence in the offender's own behalf;

10 (c) the opportunity to question adverse witnesses; and

11 (d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part
12 1.

13 (5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or
14 conditions of the sentence can be modified unless:

15 (a) the offender admits the allegations and waives the right to a hearing; or

16 (b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice
17 of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of
18 probation is not favorable to the offender for the purposes of this subsection (5)(b).

19 (6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has
20 been a violation of:

21 (i) the terms and conditions of the suspended or deferred sentence; or

22 (ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4),
23 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4).

24 (b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the
25 violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the
26 offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

27 (7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or
28 deferred sentence and the violation is not a compliance violation, the judge may:

29 (i) continue the suspended or deferred sentence without a change in conditions;

30 (ii) continue the suspended sentence with modified or additional terms and conditions, which may include

1 imprisonment for up to 9 months in a facility designated by the department;

2 (iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed
3 or any sentence that could have been imposed that does not include a longer imprisonment or commitment term
4 than the original sentence; or

5 (iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

6 (b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time, consult
7 the records and recollection of the probation and parole officer, and either expressly allow all or part of the
8 elapsed time served without any record or recollection of violations as a credit against the sentence or reject all
9 or part of the time as a credit. The If the judge determines that elapsed time should not be credited, the judge
10 shall state the reasons for the judge's determination in the order. Credit must be allowed for time served in a
11 detention center or for home arrest time already served.

12 (c) If ~~a~~ the judge finds that ~~an~~ the offender has not violated a term or condition of a suspended or
13 deferred sentence, ~~that~~ the judge is not prevented from setting, modifying, or adding conditions of probation as
14 provided in 46-23-1011.

15 (8) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or
16 deferred sentence, that the violation is a compliance violation, and that the appropriate violation responses under
17 the incentives and interventions grid have not been exhausted, the judge shall notify the department and refer
18 the matter back to the hearings officer.

19 (b) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred
20 sentence, that the violation is a compliance violation, and that the appropriate violation responses under the
21 incentives and interventions grid have been exhausted, the judge may:

22 (i) continue the suspended or deferred sentence without a change in conditions; or

23 (ii) continue the suspended or deferred sentence with modified or additional terms and conditions, which
24 may include imprisonment for up to 9 months in a facility designated by the department.

25 ~~(9)~~ (9) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that
26 there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must
27 be dismissed and the offender, if in custody, must be immediately released.

28 (10) As used in this section, the following definitions apply:

29 (a) "Absconding" means when an offender deliberately makes the offender's whereabouts unknown to
30 a probation and parole officer or fails to report for the purposes of avoiding supervision, and reasonable efforts

by the probation and parole officer to locate the offender have been unsuccessful.

(b) "Compliance violation" means a violation of the conditions of supervision that is not:

(i) a new criminal offense;

(ii) possession of a firearm in violation of a condition of probation;

(iii) behavior by the offender or any person acting at the offender's direction that could be considered stalking, harassing, or threatening the victim of the offense or a member of the victim's immediate family or support network; or

(iv) absconding.

~~(9)~~(11) The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence."

Section 2. Section 46-18-208, MCA, is amended to read:

"46-18-208. Termination of remaining portion of deferred or suspended sentence -- petition. (1)

When imposition of a sentence has been deferred or execution of a sentence has been suspended, the prosecutor, ~~or the~~ defendant, or the defendant's probation and parole officer may file a petition to terminate the time remaining on the sentence if:

(a) in the case of a deferred imposition of sentence, the defendant has served 2 years or one-half of the sentence, whichever is less, and has demonstrated compliance with supervision requirements; or

(b) in the case of a suspended sentence:

(i) the defendant has served 3 years or two-thirds of the time suspended, whichever is less; and

(ii) the defendant has been granted a conditional discharge from supervision under 46-23-1011 and has demonstrated compliance with the conditional discharge for a minimum of 12 months.

(2) The court may hold a hearing on the petition on its own motion or ~~upon~~ on request of the prosecutor or the defendant. Unless the court requires a hearing, the remaining portion of the deferred or suspended sentence is terminated 30 days after the petition is filed.

(3) ~~The~~ If the court requires a hearing on the petition, the court may grant the petition if it finds that:

(a) termination of the remainder of the sentence is in the best interests of the defendant and society;

(b) termination of the remainder of the sentence will not present an unreasonable risk of danger to the victim of the offense; and

(c) the defendant has paid all restitution and court-ordered financial obligations in full."

Section 3. Section 46-23-1011, MCA, is amended to read:

"46-23-1011. Supervision on probation. (1) The department shall supervise probationers during their probation period, including supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), in accord with the conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

(2) If the probationer is being supervised for a sexual offense as defined in 46-23-502, the conditions of probation may require the probationer to refrain from direct or indirect contact with the victim of the offense or an immediate family member of the victim. If the victim or an immediate family member of the victim requests to the department that the probationer not contact the victim or immediate family member, the department shall request a hearing with a sentencing judge and recommend that the judge add the condition of probation. If the victim is a minor, a parent or guardian of the victim may make the request on the victim's behalf.

(3) A copy of the conditions of probation must be signed by the probationer. The department may require a probationer to waive extradition for the probationer's return to Montana.

(4) The probation and parole officer shall regularly advise and consult with the probationer using effective communication strategies and other behavioral changes techniques to encourage the probationer to improve the probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful completion of the sentence.

(5) (a) The probation and parole officer may recommend and a judge may modify or add any condition of probation or suspension of sentence at any time.

(b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with a report that identifies the conditions of probation and the reason why the officer believes that the judge should modify or add the conditions.

(c) The county attorney may file a petition requesting that the court modify or add conditions as requested by the probation and parole officer.

(d) The court may grant the petition if the probationer does not object. If the probationer objects to the petition, the court shall hold a hearing pursuant to the provisions of 46-18-203.

(e) Except as they apply to supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), the provisions of 46-18-203(7)(a)(ii) do not apply to this section.

(f) The probationer shall sign a copy of new or modified conditions of probation. The court may waive or modify a condition of restitution only as provided in 46-18-246.

(6) (a) Based on the risk and needs of each individual, the probation and parole officer shall recommend conditional discharge when a probationer is in compliance with the conditions of supervision when:

(i) a low-risk probationer has served 9 months;

(ii) a medium-risk probationer has served 12 months;

(iii) a moderate-risk probationer has served 18 months; and

(iv) a high-risk probationer has served 24 months.

(b) On recommendation of the probation and parole officer, a judge may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if:

(i) the judge determines that a conditional discharge from supervision:

(A) is in the best interests of the probationer and society; and

(B) will not present unreasonable risk of danger to the victim of the offense; and

(ii) the offender has paid all restitution and court-ordered financial obligations in full.

~~(b)(c)~~ Subsection ~~(6)(a)~~ (6)(b) does not prohibit a judge from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.

~~(e) If the department certifies to the sentencing judge that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the judge may not place an offender on probation under supervision by that district office unless the judge grants a conditional discharge to a probationer being supervised by that district office. The department may recommend probationers to the judge for conditional discharge. The judge may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."~~

Section 4. Section 46-23-1015, MCA, is amended to read:

"46-23-1015. Informal probation violation intervention hearing. (1) A probation and parole officer who reasonably believes that a probationer has violated a condition of probation shall consult the incentives and

1 interventions grid adopted under 53-1-203 to determine an appropriate response and may initiate an informal
2 probation violation intervention hearing to gain the probationer's compliance with the conditions of probation
3 without a formal revocation hearing under 46-18-203.

4 (2) A hearings officer designated by the department shall conduct the intervention hearing.

5 (3) If the hearings officer determines by a preponderance of the evidence that the probationer has
6 violated a condition of probation, the hearings officer ~~may order the probationer to serve up to 30 days in a county~~
7 ~~detention center, with credit for time served since the time of arrest, or order the probationer to participate in a~~
8 ~~day reporting program as provided for in 53-1-203 and order the probationer to pay the costs of incarceration or~~
9 ~~participation in the day reporting program. The department shall pay the incarceration costs not paid by the~~
10 ~~probationer shall consult the incentives and interventions grid and determine an appropriate response, including~~
11 whether to:

12 (a) order the probationer to serve, or receive credit for serving, up to 30 days in detention;

13 (b) recommend confinement, electronic monitoring, or day reporting for up to a 90-day period; or

14 (c) direct the probation and parole officer to initiate a petition for revocation under 46-18-203, if the
15 violation is not a compliance violation or if it is a compliance violation and appropriate responses under the
16 incentives and interventions grid have been exhausted.

17 (4) If the hearings officer recommends a response under subsection (3)(b), the hearings officer shall
18 notify the probationer of the recommendation and of the probationer's right to instead have the matter referred
19 by petition for a revocation hearing under 46-18-203.

20 ~~(4)(5)~~ The provisions of chapter 9 of this title regarding release on bail of a person charged with a crime
21 ~~are not applicable~~ do not apply to a probationer ordered to be held in a county detention center or other facility
22 under this section."

23
24 **Section 5.** Section 53-1-203, MCA, is amended to read:

25 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

26 (a) subject to subsection (6), adopt rules necessary:

27 (i) to carry out the purposes of 41-5-125;

28 (ii) for the siting, establishment, and expansion of prerelease centers;

29 (iii) for the expansion of treatment facilities or programs previously established by contract through a
30 competitive procurement process;

1 (iv) for the establishment and maintenance of residential methamphetamine treatment programs; and
2 (v) for the admission, custody, transfer, and release of persons in department programs except as
3 otherwise provided by law;

4 (b) subject to the functions of the department of administration, lease or purchase lands for use by
5 correctional facilities and classify those lands to determine those that may be most profitably used for agricultural
6 purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown
7 or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the
8 persons confined in correctional facilities;

9 (c) contract with private, nonprofit Montana corporations or, pursuant to the Montana Community
10 Corrections Act, with community corrections facilities or programs or local or tribal governments to establish and
11 maintain:

12 (i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole
13 eligibility or discharge for release into the community, providing an alternative placement for offenders who have
14 violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The
15 centers shall provide a less restrictive environment than the prison while maintaining adequate security. The
16 centers must be operated in coordination with other department correctional programs. This subsection does not
17 affect the department's authority to operate and maintain prerelease centers.

18 (ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as
19 provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for
20 persons convicted of possession of methamphetamine. The department shall issue a request for proposals using
21 a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

22 (d) use the staff and services of other state agencies and units of the Montana university system, within
23 their respective statutory functions, to carry out its functions under this title;

24 (e) propose programs to the legislature to meet the projected long-range needs of corrections, including
25 programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed
26 in correctional facilities or programs;

27 (f) encourage the establishment of programs at the local and state level for the rehabilitation and
28 education of felony offenders;

29 (g) administer all state and federal funds allocated to the department for delinquent youth, as defined
30 in 41-5-103;

1 (h) collect and disseminate information relating to youth who are committed to the department for
2 placement in a state youth correctional facility;

3 (i) maintain adequate data on placements that it funds in order to keep the legislature properly informed
4 of the specific information, by category, related to delinquent youth in out-of-home care facilities;

5 (j) provide funding for youth who are committed to the department for placement in a state youth
6 correctional facility;

7 (k) administer youth correctional facilities;

8 (l) provide supervision, care, and control of youth released from a state youth correctional facility; and

9 (m) use to maximum efficiency the resources of state government in a coordinated effort to:

10 (i) provide for delinquent youth committed to the department; and

11 (ii) coordinate and apply the principles of modern correctional administration to the facilities and programs
12 administered by the department.

13 (2) The department may contract with private, nonprofit or for-profit Montana corporations to establish
14 and maintain a residential sexual offender treatment program. If the department intends to contract for that
15 purpose, the department shall adopt rules for the establishment and maintenance of that program.

16 (3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a
17 contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit
18 the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a
19 contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit
20 committee. The legislative audit division shall review the contract and make recommendations or comments to
21 the legislative audit committee. The committee may make recommendations or comments to the department. The
22 department shall respond to the committee, accepting or rejecting the committee recommendations or comments
23 prior to entering into the contract.

24 (4) The department of corrections may enter into contracts with nonprofit corporations or associations
25 or private organizations to provide substitute care for delinquent youth in state youth correctional facilities or on
26 juvenile parole supervision.

27 (5) The department may contract with Montana corporations to operate a day reporting program as an
28 alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015.
29 The department shall adopt by rule the requirements for a day reporting program, including but not limited to
30 requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance

1 with any conditions of probation, such as drug testing.

2 (6) Rules adopted by the department pursuant to subsection (1)(a) may not amend or alter the statutory
3 powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and
4 expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants,
5 restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited
6 at any location without community support. The prerelease siting, establishment, and expansion must be subject
7 to, and the rules must include, a reasonable mechanism for a determination of community support for or objection
8 to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment,
9 and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

10 (7) The department shall revise, maintain, and fully implement the policy known as the Montana
11 incentives and interventions grid. The grid must guide responses to negative and positive behavior by people
12 under supervision by the department, including responses to violations of supervision conditions in a swift,
13 certain, and proportional manner. The grid must include guidance and procedures to determine when and how
14 to:

15 (a) request a warrant or arrest without a warrant;

16 (b) use a 72-hour detention;

17 (c) initiate an intervention hearing;

18 (d) seek departmental approval to use up to 90-day interventions; and

19 (e) exhaust violations responses before initiating the revocation process.

20 (8) The department shall:

21 (a) provide information and training on the grid for probation and parole officers and supervisors and for
22 members and staff of the board of pardons and parole; and

23 (b) offer information and training on the grid to district court judges, prosecution and defense attorneys,
24 law enforcement personnel, and county detention center personnel."

25 - END -

SENATE BILL NO. 63

INTRODUCED BY C. WOLKEN

BY REQUEST OF THE COMMISSION ON SENTENCING

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO SUPERVISION OF PROBATIONERS AND OF DEFENDANTS SERVING A DEFERRED OR SUSPENDED SENTENCE; REVISING THE PROCESS TO REVOKE A DEFERRED OR SUSPENDED SENTENCE FOR VIOLATIONS OF CONDITIONS; ALLOWING A PROBATION AND PAROLE OFFICER TO FILE A PETITION TO TERMINATE THE TIME REMAINING ON A DEFERRED OR SUSPENDED SENTENCE; CREATING A DEADLINE AFTER WHICH THE DEFERRED OR SUSPENDED SENTENCE IS TERMINATED; CREATING A SCHEDULE FOR CONDITIONAL DISCHARGE RECOMMENDATIONS FOR PROBATIONERS; REVISING PROCEDURES FOR AN INFORMAL PROBATION VIOLATION HEARING; REQUIRING THE DEPARTMENT OF CORRECTIONS TO IMPLEMENT AN INCENTIVES AND INTERVENTIONS GRID; REQUIRING THE DEPARTMENT TO PROVIDE TRAINING RELATED TO THE INCENTIVES AND INTERVENTIONS GRID; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 46-18-203, 46-18-208, 46-23-1011, 46-23-1015, AND 53-1-203, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-203, MCA, is amended to read:

"46-18-203. Revocation of suspended or deferred sentence. (1) Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence, any condition of a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), and describing the exhaustion of appropriate violation responses according to the incentives and interventions grid adopted under 53-1-203, the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court either before the period of

1 suspension or deferral has begun or during the period of suspension or deferral but not after the period has
2 expired. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of
3 its jurisdiction to rule on the petition.

4 (3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested
5 pursuant to this section.

6 (4) Without unnecessary delay and no more than 60 days after arrest, the offender must be brought
7 before the judge, and at least 10 days prior to the hearing the offender must be advised of:

8 (a) the allegations of the petition;

9 (b) the opportunity to appear and to present evidence in the offender's own behalf;

10 (c) the opportunity to question adverse witnesses; and

11 (d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part
12 1.

13 (5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or
14 conditions of the sentence can be modified unless:

15 (a) the offender admits the allegations and waives the right to a hearing; or

16 (b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice
17 of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of
18 probation is not favorable to the offender for the purposes of this subsection (5)(b).

19 (6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has
20 been a violation of:

21 (i) the terms and conditions of the suspended or deferred sentence; or

22 (ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4),
23 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4).

24 (b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the
25 violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the
26 offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

27 (7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or
28 deferred sentence and the violation is not a compliance violation, the judge may:

29 (i) continue the suspended or deferred sentence without a change in conditions;

30 (ii) continue the suspended sentence with modified or additional terms and conditions, which may include

1 imprisonment for up to 9 months in a facility designated by the department;

2 (iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed
3 or any sentence that could have been imposed that does not include a longer imprisonment or commitment term
4 than the original sentence; or

5 (iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

6 (b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time, consult
7 the records and recollection of the probation and parole officer, and either expressly allow all or part of the
8 elapsed time served without any record or recollection of violations as a credit against the sentence or reject all
9 or part of the time as a credit. The If the judge determines that elapsed time should not be credited, the judge
10 shall state the reasons for the judge's determination in the order. Credit must be allowed for time served in a
11 detention center or for home arrest time already served.

12 (c) If ~~a~~ the judge finds that ~~an~~ the offender has not violated a term or condition of a suspended or
13 deferred sentence, ~~that~~ the judge is not prevented from setting, modifying, or adding conditions of probation as
14 provided in 46-23-1011.

15 (8) (a) If EXCEPT AS PROVIDED IN SUBSECTION (8)(C), IF the judge finds that the offender has violated the
16 terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that
17 the appropriate violation responses under the incentives and interventions grid have not been exhausted, the
18 judge shall notify the department and refer the matter back to the hearings officer.

19 (b) If EXCEPT AS PROVIDED IN SUBSECTION (8)(C), IF the judge finds that the offender has violated the terms
20 and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the
21 appropriate violation responses under the incentives and interventions grid have been exhausted, the judge may:

22 (i) continue the suspended or deferred sentence without a change in conditions; or

23 (ii) continue the suspended or deferred sentence with modified or additional terms and conditions, which
24 may include imprisonment for up to 9 months in a facility designated by the department.

25 (C) IF THE JUDGE FINDS THAT THE OFFENDER HAS VIOLATED THE TERMS AND CONDITIONS OF THE SUSPENDED
26 OR DEFERRED SENTENCE, THAT THE VIOLATION IS A COMPLIANCE VIOLATION, AND THAT THE OFFENDER'S CONDUCT
27 INDICATES THAT THE OFFENDER WILL NOT BE RESPONSIVE TO FURTHER EFFORTS UNDER THE INCENTIVES AND
28 INTERVENTIONS GRID, THE JUDGE MAY SENTENCE THE OFFENDER AS PROVIDED IN SUBSECTION (7).

29 ~~(8)(9)~~ If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that
30 there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must

be dismissed and the offender, if in custody, must be immediately released.

(10) As used in this section, the following definitions apply:

(a) "Absconding" means when an offender deliberately makes the offender's whereabouts unknown to a probation and parole officer or fails to report for the purposes of avoiding supervision, and reasonable efforts by the probation and parole officer to locate the offender have been unsuccessful.

(b) "Compliance violation" means a violation of the conditions of supervision that is not:

(i) a new criminal offense;

(ii) possession of a firearm in violation of a condition of probation;

(iii) behavior by the offender or any person acting at the offender's direction that could be considered stalking, harassing, or threatening the victim of the offense or a member of the victim's immediate family or support network; or

(iv) absconding; OR

(v) FAILURE TO ENROLL IN OR COMPLETE A REQUIRED SEX OFFENDER TREATMENT PROGRAM OR A TREATMENT PROGRAM DESIGNED TO TREAT VIOLENT OFFENDERS.

~~(9)~~(11) The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence."

Section 2. Section 46-18-208, MCA, is amended to read:

"46-18-208. Termination of remaining portion of deferred or suspended sentence -- petition. (1)

When imposition of a sentence has been deferred or execution of a sentence has been suspended, the prosecutor, ~~or the defendant, or the defendant's probation and parole officer~~ may file a petition to terminate the time remaining on the sentence if:

(a) in the case of a deferred imposition of sentence, the defendant has served 2 years or one-half of the sentence, whichever is less, and has demonstrated compliance with supervision requirements; or

(b) in the case of a suspended sentence:

(i) the defendant has served 3 years or two-thirds of the time suspended, whichever is less; and

(ii) the defendant has been granted a conditional discharge from supervision under 46-23-1011 and has demonstrated compliance with the conditional discharge for a minimum of 12 months.

(2) The court may hold a hearing on the petition on its own motion or ~~upon~~ on request of the prosecutor

1 or the defendant. Unless the court requires a hearing, the remaining portion of the deferred or suspended
2 sentence is terminated 30 days after the petition is filed.

3 (3) ~~The~~ If the court requires a hearing on the petition, the court may grant the petition if it finds that:

4 (a) termination of the remainder of the sentence is in the best interests of the defendant and society;

5 (b) termination of the remainder of the sentence will not present an unreasonable risk of danger to the
6 victim of the offense; and

7 (c) the defendant has paid all restitution and court-ordered financial obligations in full."
8

9 **Section 3.** Section 46-23-1011, MCA, is amended to read:

10 **"46-23-1011. Supervision on probation.** (1) The department shall supervise probationers during their
11 probation period, including supervision after release from imprisonment imposed pursuant to 45-5-503(4),
12 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), in accord with the conditions set by a
13 sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court
14 shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be
15 present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

16 (2) If the probationer is being supervised for a sexual offense as defined in 46-23-502, the conditions
17 of probation may require the probationer to refrain from direct or indirect contact with the victim of the offense or
18 an immediate family member of the victim. If the victim or an immediate family member of the victim requests to
19 the department that the probationer not contact the victim or immediate family member, the department shall
20 request a hearing with a sentencing judge and recommend that the judge add the condition of probation. If the
21 victim is a minor, a parent or guardian of the victim may make the request on the victim's behalf.

22 (3) A copy of the conditions of probation must be signed by the probationer. The department may require
23 a probationer to waive extradition for the probationer's return to Montana.

24 (4) The probation and parole officer shall regularly advise and consult with the probationer using effective
25 communication strategies and other behavioral changes techniques to encourage the probationer to improve the
26 probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful
27 completion of the sentence.

28 (5) (a) The probation and parole officer may recommend and a judge may modify or add any condition
29 of probation or suspension of sentence at any time.

30 (b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with

1 a report that identifies the conditions of probation and the reason why the officer believes that the judge should
2 modify or add the conditions.

3 (c) The county attorney may file a petition requesting that the court modify or add conditions as
4 requested by the probation and parole officer.

5 (d) The court may grant the petition if the probationer does not object. If the probationer objects to the
6 petition, the court shall hold a hearing pursuant to the provisions of 46-18-203.

7 (e) Except as they apply to supervision after release from imprisonment imposed pursuant to
8 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), the provisions of
9 46-18-203(7)(a)(ii) do not apply to this section.

10 (f) The probationer shall sign a copy of new or modified conditions of probation. The court may waive
11 or modify a condition of restitution only as provided in 46-18-246.

12 (6) (a) Based on the risk and needs of each individual, the probation and parole officer shall recommend
13 conditional discharge when a probationer is in compliance with the conditions of supervision when:

14 (i) a low-risk probationer has served 9 months;

15 (ii) a medium-risk probationer has served 12 months;

16 (iii) a moderate-risk probationer has served 18 months; and

17 (iv) a high-risk probationer has served 24 months.

18 (b) On recommendation of the probation and parole officer, a judge may conditionally discharge a
19 probationer from supervision before expiration of the probationer's sentence if:

20 (i) the judge determines that a conditional discharge from supervision:

21 (A) is in the best interests of the probationer and society; and

22 (B) will not present unreasonable risk of danger to the victim of the offense; and

23 (ii) the offender has paid all restitution and court-ordered financial obligations in full.

24 ~~(b)(c)~~ Subsection ~~(6)(a)~~ (6)(b) does not prohibit a judge from revoking the order suspending execution
25 or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally
26 discharged from supervision.

27 ~~(c) If the department certifies to the sentencing judge that the workload of a district probation and parole~~
28 ~~office has exceeded the optimum workload for the district over the preceding 60 days, the judge may not place~~
29 ~~an offender on probation under supervision by that district office unless the judge grants a conditional discharge~~
30 ~~to a probationer being supervised by that district office. The department may recommend probationers to the~~

1 judge for conditional discharge. The judge may accept or reject the recommendations of the department. The
2 department shall determine the optimum workload for each district probation and parole office."

3
4 **Section 4.** Section 46-23-1015, MCA, is amended to read:

5 **"46-23-1015. Informal probation violation intervention hearing.** (1) A probation and parole officer
6 who reasonably believes that a probationer has violated a condition of probation shall consult the incentives and
7 interventions grid adopted under 53-1-203 to determine an appropriate response and may initiate an informal
8 probation violation intervention hearing to gain the probationer's compliance with the conditions of probation
9 without a formal revocation hearing under 46-18-203.

10 (2) A hearings officer designated by the department shall conduct the intervention hearing.

11 (3) If the hearings officer determines by a preponderance of the evidence that the probationer has
12 violated a condition of probation, the hearings officer ~~may order the probationer to serve up to 30 days in a county~~
13 ~~detention center, with credit for time served since the time of arrest, or order the probationer to participate in a~~
14 ~~day reporting program as provided for in 53-1-203 and order the probationer to pay the costs of incarceration or~~
15 ~~participation in the day reporting program. The department shall pay the incarceration costs not paid by the~~
16 ~~probationer~~ shall consult the incentives and interventions grid and determine an appropriate response, including
17 whether to:

18 (a) order the probationer to serve, or receive credit for serving, up to 30 days in detention;

19 (b) recommend confinement, electronic monitoring, or day reporting for up to a 90-day period; or

20 (c) direct the probation and parole officer to initiate a petition for revocation under 46-18-203, if the
21 violation is not a compliance violation or if it is a compliance violation and appropriate responses under the
22 incentives and interventions grid have been exhausted.

23 (4) If the hearings officer recommends a response under subsection (3)(b), the hearings officer shall
24 notify the probationer of the recommendation and of the probationer's right to instead have the matter referred
25 by petition for a revocation hearing under 46-18-203.

26 ~~(4)(5)~~ (5) The provisions of chapter 9 of this title regarding release on bail of a person charged with a crime
27 are not applicable do not apply to a probationer ordered to be held in a county detention center or other facility
28 under this section."

29
30 **Section 5.** Section 53-1-203, MCA, is amended to read:

1 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

2 (a) subject to subsection (6), adopt rules necessary:

3 (i) to carry out the purposes of 41-5-125;

4 (ii) for the siting, establishment, and expansion of prerelease centers;

5 (iii) for the expansion of treatment facilities or programs previously established by contract through a
6 competitive procurement process;

7 (iv) for the establishment and maintenance of residential methamphetamine treatment programs; and

8 (v) for the admission, custody, transfer, and release of persons in department programs except as
9 otherwise provided by law;

10 (b) subject to the functions of the department of administration, lease or purchase lands for use by
11 correctional facilities and classify those lands to determine those that may be most profitably used for agricultural
12 purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown
13 or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the
14 persons confined in correctional facilities;

15 (c) contract with private, nonprofit Montana corporations or, pursuant to the Montana Community
16 Corrections Act, with community corrections facilities or programs or local or tribal governments to establish and
17 maintain:

18 (i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole
19 eligibility or discharge for release into the community, providing an alternative placement for offenders who have
20 violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The
21 centers shall provide a less restrictive environment than the prison while maintaining adequate security. The
22 centers must be operated in coordination with other department correctional programs. This subsection does not
23 affect the department's authority to operate and maintain prerelease centers.

24 (ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as
25 provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for
26 persons convicted of possession of methamphetamine. The department shall issue a request for proposals using
27 a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

28 (d) use the staff and services of other state agencies and units of the Montana university system, within
29 their respective statutory functions, to carry out its functions under this title;

30 (e) propose programs to the legislature to meet the projected long-range needs of corrections, including

1 programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed
2 in correctional facilities or programs;

3 (f) encourage the establishment of programs at the local and state level for the rehabilitation and
4 education of felony offenders;

5 (g) administer all state and federal funds allocated to the department for delinquent youth, as defined
6 in 41-5-103;

7 (h) collect and disseminate information relating to youth who are committed to the department for
8 placement in a state youth correctional facility;

9 (i) maintain adequate data on placements that it funds in order to keep the legislature properly informed
10 of the specific information, by category, related to delinquent youth in out-of-home care facilities;

11 (j) provide funding for youth who are committed to the department for placement in a state youth
12 correctional facility;

13 (k) administer youth correctional facilities;

14 (l) provide supervision, care, and control of youth released from a state youth correctional facility; and

15 (m) use to maximum efficiency the resources of state government in a coordinated effort to:

16 (i) provide for delinquent youth committed to the department; and

17 (ii) coordinate and apply the principles of modern correctional administration to the facilities and programs
18 administered by the department.

19 (2) The department may contract with private, nonprofit or for-profit Montana corporations to establish
20 and maintain a residential sexual offender treatment program. If the department intends to contract for that
21 purpose, the department shall adopt rules for the establishment and maintenance of that program.

22 (3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a
23 contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit
24 the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a
25 contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit
26 committee. The legislative audit division shall review the contract and make recommendations or comments to
27 the legislative audit committee. The committee may make recommendations or comments to the department. The
28 department shall respond to the committee, accepting or rejecting the committee recommendations or comments
29 prior to entering into the contract.

30 (4) The department of corrections may enter into contracts with nonprofit corporations or associations

1 or private organizations to provide substitute care for delinquent youth in state youth correctional facilities or on
2 juvenile parole supervision.

3 (5) The department may contract with Montana corporations to operate a day reporting program as an
4 alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015.
5 The department shall adopt by rule the requirements for a day reporting program, including but not limited to
6 requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance
7 with any conditions of probation, such as drug testing.

8 (6) Rules adopted by the department pursuant to subsection (1)(a) may not amend or alter the statutory
9 powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and
10 expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants,
11 restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited
12 at any location without community support. The prerelease siting, establishment, and expansion must be subject
13 to, and the rules must include, a reasonable mechanism for a determination of community support for or objection
14 to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment,
15 and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

16 (7) The department shall revise, maintain, and fully implement the policy known as the Montana
17 incentives and interventions grid. The grid must guide responses to negative and positive behavior by people
18 under supervision by the department, including responses to violations of supervision conditions in a swift,
19 certain, and proportional manner. The grid must include guidance and procedures to determine when and how
20 to:

21 (a) request a warrant or arrest without a warrant;

22 (b) use a 72-hour detention;

23 (c) initiate an intervention hearing;

24 (d) seek departmental approval to use up to 90-day interventions; and

25 (e) exhaust violations responses before initiating the revocation process.

26 (8) The department shall:

27 (a) provide information and training on the grid for probation and parole officers and supervisors and for
28 members and staff of the board of pardons and parole; and

29 (b) offer information and training on the grid to district court judges, prosecution and defense attorneys,
30 law enforcement personnel, and county detention center personnel."

31 - END -

SENATE BILL NO. 63

INTRODUCED BY C. WOLKEN

BY REQUEST OF THE COMMISSION ON SENTENCING

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO SUPERVISION OF PROBATIONERS AND OF DEFENDANTS SERVING A DEFERRED OR SUSPENDED SENTENCE; REVISING THE PROCESS TO REVOKE A DEFERRED OR SUSPENDED SENTENCE FOR VIOLATIONS OF CONDITIONS; ALLOWING A PROBATION AND PAROLE OFFICER TO FILE A PETITION TO TERMINATE THE TIME REMAINING ON A DEFERRED OR SUSPENDED SENTENCE; CREATING A DEADLINE AFTER WHICH THE DEFERRED OR SUSPENDED SENTENCE IS TERMINATED; CREATING A SCHEDULE FOR CONDITIONAL DISCHARGE RECOMMENDATIONS FOR PROBATIONERS; REVISING PROCEDURES FOR AN INFORMAL PROBATION VIOLATION HEARING; REQUIRING THE DEPARTMENT OF CORRECTIONS TO IMPLEMENT AN INCENTIVES AND INTERVENTIONS GRID; REQUIRING THE DEPARTMENT TO PROVIDE TRAINING RELATED TO THE INCENTIVES AND INTERVENTIONS GRID; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 46-18-203, 46-18-208, 46-23-1011, 46-23-1015, AND 53-1-203, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-203, MCA, is amended to read:

"46-18-203. Revocation of suspended or deferred sentence. (1) Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence, any condition of a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), and describing the exhaustion AND DOCUMENTATION IN THE OFFENDER'S FILE of appropriate violation responses according to the incentives and interventions grid adopted under 53-1-203, the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court either before the period of suspension or deferral has begun or during the period of suspension or deferral but not after the period has expired. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay and no more than 60 days after arrest, the offender must be brought before the judge, and at least 10 days prior to the hearing the offender must be advised of:

- (a) the allegations of the petition;
- (b) the opportunity to appear and to present evidence in the offender's own behalf;
- (c) the opportunity to question adverse witnesses; and
- (d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified unless:

- (a) the offender admits the allegations and waives the right to a hearing; or
- (b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of:

- (i) the terms and conditions of the suspended or deferred sentence; or
- (ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4).

(b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence and the violation is not a compliance violation, the judge may:

- (i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions, which may include imprisonment for up to 9 months in a facility designated by the department PLACEMENT IN A COMMUNITY CORRECTIONS FACILITY OR PROGRAM DESIGNATED BY THE DEPARTMENT FOR UP TO 9 MONTHS, INCLUDING BUT NOT LIMITED TO PLACEMENT IN A PRERELEASE CENTER, SANCTION OR HOLD BED, TRANSITIONAL LIVING PROGRAM, ENHANCED SUPERVISION PROGRAM, RELAPSE INTERVENTION BED, CHEMICAL DEPENDENCY TREATMENT, OR 24/7 SOBRIETY PROGRAM;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any sentence that could have been imposed that does not include a longer imprisonment or commitment term than the original sentence; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time, consult the records and recollection of the probation and parole officer, and either expressly allow all or part of the elapsed time served without any record or recollection of violations as a credit against the sentence or reject all or part of the time as a credit. The If the judge determines that elapsed time should not be credited, the judge shall state the reasons for the judge's determination in the order. Credit must be allowed for time served in a detention center or for home arrest time already served.

(c) If ~~a~~ the judge finds that ~~an~~ the offender has not violated a term or condition of a suspended or deferred sentence, ~~that~~ the judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) (a) If EXCEPT AS PROVIDED IN SUBSECTION (8)(C), IF the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the appropriate violation responses under the incentives and interventions grid have not been exhausted AND DOCUMENTED IN THE OFFENDER'S FILE, the judge shall notify the department and refer the matter back to the hearings officer.

(b) If EXCEPT AS PROVIDED IN SUBSECTION (8)(C), IF the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the appropriate violation responses under the incentives and interventions grid have been exhausted AND DOCUMENTED IN THE OFFENDER'S FILE, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions; or

(ii) continue the suspended or deferred sentence with modified or additional terms and conditions, which

~~may include imprisonment for up to 9 months in a facility designated by the department~~ PLACEMENT AS PROVIDED
IN SUBSECTION (7)(A)(II).

(C) IF THE JUDGE FINDS THAT THE OFFENDER HAS VIOLATED THE TERMS AND CONDITIONS OF THE SUSPENDED
OR DEFERRED SENTENCE, THAT THE VIOLATION IS A COMPLIANCE VIOLATION, AND THAT THE OFFENDER'S CONDUCT
INDICATES THAT THE OFFENDER WILL NOT BE RESPONSIVE TO FURTHER EFFORTS UNDER THE INCENTIVES AND
INTERVENTIONS GRID, THE JUDGE MAY SENTENCE THE OFFENDER AS PROVIDED IN SUBSECTION (7).

~~(8)(9)~~ If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that
there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must
be dismissed and the offender, if in custody, must be immediately released.

(10) ALL SANCTION AND PLACEMENT DECISIONS MUST BE DOCUMENTED IN THE OFFENDER'S FILE.

~~(10)(11)~~ As used in this section, the following definitions apply:

(a) "Absconding" means when an offender deliberately makes the offender's whereabouts unknown to
a probation and parole officer or fails to report for the purposes of avoiding supervision, and reasonable efforts
by the probation and parole officer to locate the offender have been unsuccessful.

(b) "Compliance violation" means a violation of the conditions of supervision that is not:

(i) a new criminal offense;

(ii) possession of a firearm in violation of a condition of probation;

(iii) behavior by the offender or any person acting at the offender's direction that could be considered
stalking, harassing, or threatening the victim of the offense or a member of the victim's immediate family or
support network; or

(iv) absconding; OR

(V) FAILURE TO ENROLL IN OR COMPLETE A REQUIRED SEX OFFENDER TREATMENT PROGRAM OR A TREATMENT
PROGRAM DESIGNED TO TREAT VIOLENT OFFENDERS.

~~(9)(11)(12)~~ The provisions of this section apply to any offender whose suspended or deferred sentence
is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and
conditions of the offender's original sentence."

Section 2. Section 46-18-208, MCA, is amended to read:

"46-18-208. Termination of remaining portion of deferred or suspended sentence -- petition. (1)

When imposition of a sentence has been deferred or execution of a sentence has been suspended, the

1 prosecutor, ~~or the defendant, or the defendant's probation and parole officer~~ may file a petition to terminate the
2 time remaining on the sentence if:

3 (a) in the case of a deferred imposition of sentence, the defendant has served 2 years or one-half of the
4 sentence, whichever is less, and has demonstrated compliance with supervision requirements; or

5 (b) in the case of a suspended sentence:

6 (i) the defendant has served 3 years or two-thirds of the time suspended, whichever is less; and

7 (ii) the defendant has been granted a conditional discharge from supervision under 46-23-1011 and has
8 demonstrated compliance with the conditional discharge for a minimum of 12 months.

9 (2) The court may hold a hearing on the petition on its own motion or ~~upon~~ on request of the prosecutor
10 or the defendant. Unless the court requires a hearing, the remaining portion of the deferred or suspended
11 sentence is terminated 30 days after the petition is filed.

12 (3) ~~The~~ If the court requires a hearing on the petition, the court may grant the petition if it finds that:

13 (a) termination of the remainder of the sentence is in the best interests of the defendant and society;

14 (b) termination of the remainder of the sentence will not present an unreasonable risk of danger to the
15 victim of the offense; and

16 (c) the defendant has paid all restitution and court-ordered financial obligations in full."
17

18 **Section 3.** Section 46-23-1011, MCA, is amended to read:

19 **"46-23-1011. Supervision on probation.** (1) The department shall supervise probationers during their
20 probation period, including supervision after release from imprisonment imposed pursuant to 45-5-503(4),
21 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), in accord with the conditions set by a
22 sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court
23 shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be
24 present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

25 (2) If the probationer is being supervised for a sexual offense as defined in 46-23-502, the conditions
26 of probation may require the probationer to refrain from direct or indirect contact with the victim of the offense or
27 an immediate family member of the victim. If the victim or an immediate family member of the victim requests to
28 the department that the probationer not contact the victim or immediate family member, the department shall
29 request a hearing with a sentencing judge and recommend that the judge add the condition of probation. If the
30 victim is a minor, a parent or guardian of the victim may make the request on the victim's behalf.

(3) A copy of the conditions of probation must be signed by the probationer. The department may require a probationer to waive extradition for the probationer's return to Montana.

(4) The probation and parole officer shall regularly advise and consult with the probationer using effective communication strategies and other behavioral changes techniques EVIDENCE-BASED PRACTICES to encourage the probationer to improve the probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful completion of the sentence.

(5) (a) The probation and parole officer may recommend and a judge may modify or add any condition of probation or suspension of sentence at any time.

(b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with a report that identifies the conditions of probation and the reason why the officer believes that the judge should modify or add the conditions.

(c) The county attorney may file a petition requesting that the court modify or add conditions as requested by the probation and parole officer.

(d) The court may grant the petition if the probationer does not object. If the probationer objects to the petition, the court shall hold a hearing pursuant to the provisions of 46-18-203.

(e) Except as they apply to supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), the provisions of 46-18-203(7)(a)(ii) do not apply to this section.

(f) The probationer shall sign a copy of new or modified conditions of probation. The court may waive or modify a condition of restitution only as provided in 46-18-246.

(6) (a) Based on the risk and needs of each individual AS DETERMINED BY THE INDIVIDUAL'S MOST RECENT RISK AND NEEDS ASSESSMENT, the probation and parole officer shall recommend conditional discharge when a probationer is in compliance with the conditions of supervision when:

(i) a low-risk probationer has served 9 months;

(ii) a medium-risk probationer has served 12 months;

(iii) a moderate-risk probationer has served 18 months; and

(iv) a high-risk probationer has served 24 months.

(b) On recommendation of the probation and parole officer, a judge may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if:

(i) the judge determines that a conditional discharge from supervision:

1 (A) is in the best interests of the probationer and society; and

2 (B) will not present unreasonable risk of danger to the victim of the offense; and

3 (ii) the offender has paid all restitution and court-ordered financial obligations in full.

4 ~~(b)(c)~~ Subsection ~~(6)(a)~~ (6)(b) does not prohibit a judge from revoking the order suspending execution
5 or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally
6 discharged from supervision.

7 ~~(c) If the department certifies to the sentencing judge that the workload of a district probation and parole~~
8 ~~office has exceeded the optimum workload for the district over the preceding 60 days, the judge may not place~~
9 ~~an offender on probation under supervision by that district office unless the judge grants a conditional discharge~~
10 ~~to a probationer being supervised by that district office. The department may recommend probationers to the~~
11 ~~judge for conditional discharge. The judge may accept or reject the recommendations of the department. The~~
12 ~~department shall determine the optimum workload for each district probation and parole office."~~

13
14 **Section 4.** Section 46-23-1015, MCA, is amended to read:

15 **"46-23-1015. Informal probation violation intervention hearing.** (1) A probation and parole officer
16 who reasonably believes that a probationer has violated a condition of probation shall consult the incentives and
17 interventions grid adopted under 53-1-203 to determine an appropriate response and may initiate an informal
18 probation violation intervention hearing to gain the probationer's compliance with the conditions of probation
19 without a formal revocation hearing under 46-18-203.

20 (2) A hearings officer designated by the department shall conduct the intervention hearing.

21 (3) If the hearings officer determines by a preponderance of the evidence that the probationer has
22 violated a condition of probation, the hearings officer ~~may order the probationer to serve up to 30 days in a county~~
23 ~~detention center, with credit for time served since the time of arrest, or order the probationer to participate in a~~
24 ~~day reporting program as provided for in 53-1-203 and order the probationer to pay the costs of incarceration or~~
25 ~~participation in the day reporting program. The department shall pay the incarceration costs not paid by the~~
26 ~~probationer~~ shall consult the incentives and interventions grid and determine an appropriate response, including
27 whether to:

28 (a) order the probationer to serve, or receive credit for serving, up to 30 days in detention;

29 (b) recommend confinement, electronic monitoring; or day reporting for up to a 90-day period; or

30 (c) RECOMMEND PLACEMENT IN A COMMUNITY CORRECTIONS FACILITY OR PROGRAM FOR UP TO A 90-DAY

PERIOD, INCLUDING BUT NOT LIMITED TO PLACEMENT IN A PRERELEASE CENTER, SANCTION OR HOLD BED, TRANSITIONAL LIVING PROGRAM, ENHANCED SUPERVISION PROGRAM, RELAPSE INTERVENTION BED, CHEMICAL DEPENDENCY TREATMENT, OR 24/7 SOBRIETY PROGRAM; OR

(e)(D) direct the probation and parole officer to initiate a petition for revocation under 46-18-203, if the violation is not a compliance violation or if it is a compliance violation and appropriate responses under the incentives and interventions grid have been exhausted.

(4) If the hearings officer recommends a response under subsection (3)(b), the hearings officer shall notify the probationer of the recommendation and of the probationer's right to instead have the matter referred by petition for a revocation hearing under 46-18-203.

(4)(5) The provisions of chapter 9 of this title regarding release on bail of a person charged with a crime are not applicable do not apply to a probationer ordered to be held in a county detention center or other facility under this section.

(6) ALL SANCTION AND PLACEMENT DECISIONS MUST BE DOCUMENTED IN THE OFFENDER'S FILE."

Section 5. Section 53-1-203, MCA, is amended to read:

"53-1-203. Powers and duties of department of corrections. (1) The department of corrections shall:

(a) subject to subsection (6), adopt rules necessary:

(i) to carry out the purposes of 41-5-125;

(ii) for the siting, establishment, and expansion of prerelease centers;

(iii) for the expansion of treatment facilities or programs previously established by contract through a competitive procurement process;

(iv) for the establishment and maintenance of residential methamphetamine treatment programs; and

(v) for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law;

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations or, pursuant to the Montana Community

1 Corrections Act, with community corrections facilities or programs or local or tribal governments to establish and
2 maintain:

3 (i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole
4 eligibility or discharge for release into the community, providing an alternative placement for offenders who have
5 violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The
6 centers shall provide a less restrictive environment than the prison while maintaining adequate security. The
7 centers must be operated in coordination with other department correctional programs. This subsection does not
8 affect the department's authority to operate and maintain prerelease centers.

9 (ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as
10 provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for
11 persons convicted of possession of methamphetamine. The department shall issue a request for proposals using
12 a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

13 (d) use the staff and services of other state agencies and units of the Montana university system, within
14 their respective statutory functions, to carry out its functions under this title;

15 (e) propose programs to the legislature to meet the projected long-range needs of corrections, including
16 programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed
17 in correctional facilities or programs;

18 (f) encourage the establishment of programs at the local and state level for the rehabilitation and
19 education of felony offenders;

20 (g) administer all state and federal funds allocated to the department for delinquent youth, as defined
21 in 41-5-103;

22 (h) collect and disseminate information relating to youth who are committed to the department for
23 placement in a state youth correctional facility;

24 (i) maintain adequate data on placements that it funds in order to keep the legislature properly informed
25 of the specific information, by category, related to delinquent youth in out-of-home care facilities;

26 (j) provide funding for youth who are committed to the department for placement in a state youth
27 correctional facility;

28 (k) administer youth correctional facilities;

29 (l) provide supervision, care, and control of youth released from a state youth correctional facility; and

30 (m) use to maximum efficiency the resources of state government in a coordinated effort to:

1 (i) provide for delinquent youth committed to the department; and

2 (ii) coordinate and apply the principles of modern correctional administration to the facilities and programs
3 administered by the department.

4 (2) The department may contract with private, nonprofit or for-profit Montana corporations to establish
5 and maintain a residential sexual offender treatment program. If the department intends to contract for that
6 purpose, the department shall adopt rules for the establishment and maintenance of that program.

7 (3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a
8 contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit
9 the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a
10 contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit
11 committee. The legislative audit division shall review the contract and make recommendations or comments to
12 the legislative audit committee. The committee may make recommendations or comments to the department. The
13 department shall respond to the committee, accepting or rejecting the committee recommendations or comments
14 prior to entering into the contract.

15 (4) The department ~~of corrections~~ may enter into contracts with nonprofit corporations or associations
16 or private organizations to provide substitute care for delinquent youth in state youth correctional facilities or on
17 juvenile parole supervision.

18 (5) The department may contract with Montana corporations to operate a day reporting program as an
19 alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015.
20 The department shall adopt by rule the requirements for a day reporting program, including but not limited to
21 requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance
22 with any conditions of probation, such as drug testing.

23 (6) Rules adopted by the department pursuant to subsection (1)(a) may not amend or alter the statutory
24 powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and
25 expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants,
26 restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited
27 at any location without community support. The prerelease siting, establishment, and expansion must be subject
28 to, and the rules must include, a reasonable mechanism for a determination of community support for or objection
29 to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment,
30 and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

1 (7) (A) The department shall revise, maintain, and fully implement the policy known as the Montana
2 incentives and interventions grid.

3 (B) The grid must:

4 (i) guide responses to negative and positive behavior by people under supervision by the department,
5 including responses to violations of supervision conditions in a swift, certain, and proportional manner. ~~The grid~~
6 must;

7 (ii) include guidance and procedures to determine when and how to:

8 ~~(a)~~(A) request a warrant or arrest without a warrant;

9 ~~(b)~~(B) use a 72-hour detention;

10 ~~(c)~~(C) initiate an intervention hearing;

11 ~~(d)~~(D) seek departmental approval to use up to 90-day interventions; and

12 ~~(e)~~(E) exhaust AND DOCUMENT violations responses before initiating the revocation process; AND

13 (F) RECOMMEND THE LEAST RESTRICTIVE PLACEMENT FOR OFFENDERS BASED ON THE RESULT OF A VALIDATED
14 RISK AND NEEDS ASSESSMENT. PLACEMENT DECISIONS MUST BE DOCUMENTED IN THE OFFENDER'S FILE AND MUST
15 INDICATE ANY OTHER LESS SECURE SANCTION OPTIONS CONSIDERED BY THE PROBATION AND PAROLE OFFICER BEFORE
16 UTILIZING A HIGHER LEVEL OF CUSTODY.

17 (8) The department shall:

18 (A) REVIEW THE GRID EVERY 5 YEARS TO ENSURE IT ADHERES TO EVIDENCE-BASED PRACTICES AND THAT USE
19 OF SANCTIONS AND INCENTIVES BY PROBATION AND PAROLE OFFICERS IS CONSISTENT ACROSS THE STATE;

20 ~~(a)~~(B) provide information and training on the grid for probation and parole officers and supervisors and
21 for members and staff of the board of pardons and parole; and

22 ~~(b)~~(C) offer information and training on the grid to district court judges, prosecution and defense
23 attorneys, law enforcement personnel, and county detention center personnel; CONTRACTED SERVICE PROVIDERS,
24 AND OTHER INTERESTED PERSONNEL;

25 (D) ENSURE THE GUIDANCE AND PROCEDURES ESTABLISHED IN THE GRID GIVE CONSIDERATION TO COMMUNITY
26 SAFETY AND THE NEEDS OF THE VICTIM AND OFFENDER;

27 (E) COLLECT DATA RELATING TO PLACEMENT DECISIONS BASED ON THE GRID; AND

28 (F) AGGREGATE DATA COLLECTED AND PROVIDE A REPORT TO THE LAW AND JUSTICE INTERIM COMMITTEE EACH
29 BIENNIUM."

30 - END -

SENATE BILL NO. 63

INTRODUCED BY C. WOLKEN

BY REQUEST OF THE COMMISSION ON SENTENCING

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO SUPERVISION OF PROBATIONERS AND OF DEFENDANTS SERVING A DEFERRED OR SUSPENDED SENTENCE; REVISING THE PROCESS TO REVOKE A DEFERRED OR SUSPENDED SENTENCE FOR VIOLATIONS OF CONDITIONS; ALLOWING A PROBATION AND PAROLE OFFICER TO FILE A PETITION TO TERMINATE THE TIME REMAINING ON A DEFERRED OR SUSPENDED SENTENCE; CREATING A DEADLINE AFTER WHICH THE DEFERRED OR SUSPENDED SENTENCE IS TERMINATED; CREATING A SCHEDULE FOR CONDITIONAL DISCHARGE RECOMMENDATIONS FOR PROBATIONERS; REVISING PROCEDURES FOR AN INFORMAL PROBATION VIOLATION HEARING; REQUIRING THE DEPARTMENT OF CORRECTIONS TO IMPLEMENT AN INCENTIVES AND INTERVENTIONS GRID; REQUIRING THE DEPARTMENT TO PROVIDE TRAINING RELATED TO THE INCENTIVES AND INTERVENTIONS GRID; PROVIDING DEFINITIONS; ~~AND~~ AMENDING SECTIONS 46-18-203, 46-18-208, 46-23-1011, 46-23-1015, AND 53-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-203, MCA, is amended to read:

"46-18-203. Revocation of suspended or deferred sentence. (1) Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence, any condition of a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), and describing the exhaustion AND DOCUMENTATION IN THE OFFENDER'S FILE of appropriate violation responses according to the incentives and interventions grid adopted under 53-1-203, the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court either before the period of suspension or deferral has begun or during the period of suspension or deferral but not after the period has expired. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay and no more than 60 days after arrest, the offender must be brought before the judge, and at least 10 days prior to the hearing the offender must be advised of:

- (a) the allegations of the petition;
- (b) the opportunity to appear and to present evidence in the offender's own behalf;
- (c) the opportunity to question adverse witnesses; and
- (d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified unless:

- (a) the offender admits the allegations and waives the right to a hearing; or
- (b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of:

- (i) the terms and conditions of the suspended or deferred sentence; or
- (ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4).

(b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence and the violation is not a compliance violation, the judge may:

- (i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions, which may include imprisonment for up to 9 months in a facility designated by the department PLACEMENT IN:

(A) A SECURE FACILITY DESIGNATED BY THE DEPARTMENT FOR UP TO 9 MONTHS; OR

(B) A COMMUNITY CORRECTIONS FACILITY OR PROGRAM DESIGNATED BY THE DEPARTMENT FOR UP TO 9 MONTHS, INCLUDING BUT NOT LIMITED TO PLACEMENT IN A PRERELEASE CENTER, SANCTION OR HOLD BED, TRANSITIONAL LIVING PROGRAM, ENHANCED SUPERVISION PROGRAM, RELAPSE INTERVENTION BED, CHEMICAL DEPENDENCY TREATMENT, OR 24/7 SOBRIETY PROGRAM;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any sentence that could have been imposed that does not include a longer imprisonment or commitment term than the original sentence; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time, consult the records and recollection of the probation and parole officer, and ~~either expressly allow all or part of the elapsed time served without any record or recollection of violations as a credit against the sentence or reject all or part of the time as a credit.~~ The If the judge determines that elapsed time should not be credited, the judge shall state the reasons for the judge's determination in the order. Credit must be allowed for time served in a detention center or for home arrest time already served.

(c) If ~~a~~ the judge finds that ~~an~~ the offender has not violated a term or condition of a suspended or deferred sentence, ~~that the~~ judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) (a) If EXCEPT AS PROVIDED IN SUBSECTION (8)(C), IF the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the appropriate violation responses under the incentives and interventions grid have not been exhausted AND DOCUMENTED IN THE OFFENDER'S FILE, the judge shall notify the department and refer the matter back to the hearings officer.

(b) If EXCEPT AS PROVIDED IN SUBSECTION (8)(C), IF the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the appropriate violation responses under the incentives and interventions grid have been exhausted AND DOCUMENTED IN THE OFFENDER'S FILE, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions; or

(ii) continue the suspended or deferred sentence with modified or additional terms and conditions, which may include imprisonment for up to 9 months in a facility designated by the department PLACEMENT AS PROVIDED IN SUBSECTION (7)(A)(II).

(C) IF THE JUDGE FINDS THAT THE OFFENDER HAS VIOLATED THE TERMS AND CONDITIONS OF THE SUSPENDED OR DEFERRED SENTENCE, THAT THE VIOLATION IS A COMPLIANCE VIOLATION, AND THAT THE OFFENDER'S CONDUCT INDICATES THAT THE OFFENDER WILL NOT BE RESPONSIVE TO FURTHER EFFORTS UNDER THE INCENTIVES AND INTERVENTIONS GRID, THE JUDGE MAY SENTENCE THE OFFENDER AS PROVIDED IN SUBSECTION (7).

~~(8)(9)~~ If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released.

(10) ALL SANCTION AND PLACEMENT DECISIONS MUST BE DOCUMENTED IN THE OFFENDER'S FILE.

~~(10)~~(11) As used in this section, the following definitions apply:

(a) "Absconding" means when an offender deliberately makes the offender's whereabouts unknown to a probation and parole officer or fails to report for the purposes of avoiding supervision, and reasonable efforts by the probation and parole officer to locate the offender have been unsuccessful.

(b) "Compliance violation" means a violation of the conditions of supervision that is not:

(i) a new criminal offense;

(ii) possession of a firearm in violation of a condition of probation;

(iii) behavior by the offender or any person acting at the offender's direction that could be considered stalking, harassing, or threatening the victim of the offense or a member of the victim's immediate family or support network; or

(iv) absconding; OR

(v) FAILURE TO ENROLL IN OR COMPLETE A REQUIRED SEX OFFENDER TREATMENT PROGRAM OR A TREATMENT PROGRAM DESIGNED TO TREAT VIOLENT OFFENDERS.

~~(9)(11)~~(12) The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence."

Section 2. Section 46-18-208, MCA, is amended to read:

"46-18-208. Termination of remaining portion of deferred or suspended sentence -- petition. (1)

1 When imposition of a sentence has been deferred or execution of a sentence has been suspended, the
2 prosecutor, ~~or the defendant, or the defendant's probation and parole officer~~ may file a petition to terminate the
3 time remaining on the sentence if:

4 (a) in the case of a deferred imposition of sentence, the defendant has served 2 years or one-half of the
5 sentence, whichever is less, and has demonstrated compliance with supervision requirements; or

6 (b) in the case of a suspended sentence:

7 (i) the defendant has served 3 years or two-thirds of the time suspended, whichever is less; and

8 (ii) the defendant has been granted a conditional discharge from supervision under 46-23-1011 and has
9 demonstrated compliance with the conditional discharge for a minimum of 12 months.

10 (2) The court may hold a hearing on the petition on its own motion or ~~upon~~ on request of the prosecutor
11 or the defendant. Unless the court requires a hearing, the remaining portion of the deferred or suspended
12 sentence is terminated 30 days after the petition is filed.

13 (3) ~~The~~ If the court requires a hearing on the petition, the court may grant the petition if it finds that:

14 (a) termination of the remainder of the sentence is in the best interests of the defendant and society;

15 (b) termination of the remainder of the sentence will not present an unreasonable risk of danger to the
16 victim of the offense; and

17 (c) the defendant has paid all restitution and court-ordered financial obligations in full."
18

19 **Section 3.** Section 46-23-1011, MCA, is amended to read:

20 **"46-23-1011. Supervision on probation.** (1) The department shall supervise probationers during their
21 probation period, including supervision after release from imprisonment imposed pursuant to 45-5-503(4),
22 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), in accord with the conditions set by a
23 sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court
24 shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be
25 present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

26 (2) If the probationer is being supervised for a sexual offense as defined in 46-23-502, the conditions
27 of probation may require the probationer to refrain from direct or indirect contact with the victim of the offense or
28 an immediate family member of the victim. If the victim or an immediate family member of the victim requests to
29 the department that the probationer not contact the victim or immediate family member, the department shall
30 request a hearing with a sentencing judge and recommend that the judge add the condition of probation. If the

1 victim is a minor, a parent or guardian of the victim may make the request on the victim's behalf.

2 (3) A copy of the conditions of probation must be signed by the probationer. The department may require
3 a probationer to waive extradition for the probationer's return to Montana.

4 (4) The probation and parole officer shall regularly advise and consult with the probationer using effective
5 communication strategies and other behavioral changes techniques EVIDENCE-BASED PRACTICES to encourage
6 the probationer to improve the probationer's condition and conduct and shall inform the probationer of the
7 restoration of rights on successful completion of the sentence.

8 (5) (a) The probation and parole officer may recommend and a judge may modify or add any condition
9 of probation or suspension of sentence at any time.

10 (b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with
11 a report that identifies the conditions of probation and the reason why the officer believes that the judge should
12 modify or add the conditions.

13 (c) The county attorney may file a petition requesting that the court modify or add conditions as
14 requested by the probation and parole officer.

15 (d) The court may grant the petition if the probationer does not object. If the probationer objects to the
16 petition, the court shall hold a hearing pursuant to the provisions of 46-18-203.

17 (e) Except as they apply to supervision after release from imprisonment imposed pursuant to
18 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), the provisions of
19 46-18-203(7)(a)(ii) do not apply to this section.

20 (f) The probationer shall sign a copy of new or modified conditions of probation. The court may waive
21 or modify a condition of restitution only as provided in 46-18-246.

22 (6) (a) Based on the risk and needs of each individual AS DETERMINED BY THE INDIVIDUAL'S MOST RECENT
23 RISK AND NEEDS ASSESSMENT, the probation and parole officer shall recommend conditional discharge when a
24 probationer is in compliance with the conditions of supervision when:

25 (i) a low-risk probationer has served 9 months;

26 (ii) a medium-risk probationer has served 12 months;

27 (iii) a moderate-risk probationer has served 18 months; and

28 (iv) a high-risk probationer has served 24 months.

29 (b) On recommendation of the probation and parole officer, a judge may conditionally discharge a
30 probationer from supervision before expiration of the probationer's sentence if:

(i) the judge determines that a conditional discharge from supervision:

(A) is in the best interests of the probationer and society; and

(B) will not present unreasonable risk of danger to the victim of the offense; and

(ii) the offender has paid all restitution and court-ordered financial obligations in full.

~~(b)(c)~~ Subsection ~~(6)(a)~~ (6)(b) does not prohibit a judge from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.

~~(c) If the department certifies to the sentencing judge that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the judge may not place an offender on probation under supervision by that district office unless the judge grants a conditional discharge to a probationer being supervised by that district office. The department may recommend probationers to the judge for conditional discharge. The judge may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."~~

Section 4. Section 46-23-1015, MCA, is amended to read:

"46-23-1015. Informal probation violation intervention hearing. (1) A probation and parole officer who reasonably believes that a probationer has violated a condition of probation shall consult the incentives and interventions grid adopted under 53-1-203 to determine an appropriate response and may initiate an informal probation violation intervention hearing to gain the probationer's compliance with the conditions of probation without a formal revocation hearing under 46-18-203.

(2) A hearings officer designated by the department shall conduct the intervention hearing.

(3) If the hearings officer determines by a preponderance of the evidence that the probationer has violated a condition of probation, the hearings officer ~~may order the probationer to serve up to 30 days in a county detention center, with credit for time served since the time of arrest, or order the probationer to participate in a day reporting program as provided for in 53-1-203 and order the probationer to pay the costs of incarceration or participation in the day reporting program. The department shall pay the incarceration costs not paid by the probationer~~ shall consult the incentives and interventions grid and determine an appropriate response, including whether to:

(a) order the probationer to serve, or receive credit for serving, up to 30 days in detention;

(b) recommend confinement, electronic monitoring; or day reporting for up to a 90-day period; or

(C) RECOMMEND PLACEMENT IN A COMMUNITY CORRECTIONS FACILITY OR PROGRAM FOR UP TO A 90-DAY PERIOD, INCLUDING BUT NOT LIMITED TO PLACEMENT IN A PRERELEASE CENTER, SANCTION OR HOLD BED, TRANSITIONAL LIVING PROGRAM, ENHANCED SUPERVISION PROGRAM, RELAPSE INTERVENTION BED, CHEMICAL DEPENDENCY TREATMENT, OR 24/7 SOBRIETY PROGRAM; OR

(e)(D) direct the probation and parole officer to initiate a petition for revocation under 46-18-203, if the violation is not a compliance violation or if it is a compliance violation and appropriate responses under the incentives and interventions grid have been exhausted.

(4) If the hearings officer recommends a response under subsection (3)(b), the hearings officer shall notify the probationer of the recommendation and of the probationer's right to instead have the matter referred by petition for a revocation hearing under 46-18-203.

(4)(5) The provisions of chapter 9 of this title regarding release on bail of a person charged with a crime are not applicable do not apply to a probationer ordered to be held in a county detention center or other facility under this section.

(6) ALL SANCTION AND PLACEMENT DECISIONS MUST BE DOCUMENTED IN THE OFFENDER'S FILE."

Section 5. Section 53-1-203, MCA, is amended to read:

"53-1-203. Powers and duties of department of corrections. (1) The department of corrections shall:

(a) subject to subsection (6), adopt rules necessary:

(i) to carry out the purposes of 41-5-125;

(ii) for the siting, establishment, and expansion of prerelease centers;

(iii) for the expansion of treatment facilities or programs previously established by contract through a competitive procurement process;

(iv) for the establishment and maintenance of residential methamphetamine treatment programs; and

(v) for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law;

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

1 (c) contract with private, nonprofit Montana corporations or, pursuant to the Montana Community
2 Corrections Act, with community corrections facilities or programs or local or tribal governments to establish and
3 maintain:

4 (i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole
5 eligibility or discharge for release into the community, providing an alternative placement for offenders who have
6 violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The
7 centers shall provide a less restrictive environment than the prison while maintaining adequate security. The
8 centers must be operated in coordination with other department correctional programs. This subsection does not
9 affect the department's authority to operate and maintain prerelease centers.

10 (ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as
11 provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for
12 persons convicted of possession of methamphetamine. The department shall issue a request for proposals using
13 a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

14 (d) use the staff and services of other state agencies and units of the Montana university system, within
15 their respective statutory functions, to carry out its functions under this title;

16 (e) propose programs to the legislature to meet the projected long-range needs of corrections, including
17 programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed
18 in correctional facilities or programs;

19 (f) encourage the establishment of programs at the local and state level for the rehabilitation and
20 education of felony offenders;

21 (g) administer all state and federal funds allocated to the department for delinquent youth, as defined
22 in 41-5-103;

23 (h) collect and disseminate information relating to youth who are committed to the department for
24 placement in a state youth correctional facility;

25 (i) maintain adequate data on placements that it funds in order to keep the legislature properly informed
26 of the specific information, by category, related to delinquent youth in out-of-home care facilities;

27 (j) provide funding for youth who are committed to the department for placement in a state youth
28 correctional facility;

29 (k) administer youth correctional facilities;

30 (l) provide supervision, care, and control of youth released from a state youth correctional facility; and

1 (m) use to maximum efficiency the resources of state government in a coordinated effort to:
2 (i) provide for delinquent youth committed to the department; and
3 (ii) coordinate and apply the principles of modern correctional administration to the facilities and programs
4 administered by the department.

5 (2) The department may contract with private, nonprofit or for-profit Montana corporations to establish
6 and maintain a residential sexual offender treatment program. If the department intends to contract for that
7 purpose, the department shall adopt rules for the establishment and maintenance of that program.

8 (3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a
9 contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit
10 the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a
11 contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit
12 committee. The legislative audit division shall review the contract and make recommendations or comments to
13 the legislative audit committee. The committee may make recommendations or comments to the department. The
14 department shall respond to the committee, accepting or rejecting the committee recommendations or comments
15 prior to entering into the contract.

16 (4) The department ~~of corrections~~ may enter into contracts with nonprofit corporations or associations
17 or private organizations to provide substitute care for delinquent youth in state youth correctional facilities or on
18 juvenile parole supervision.

19 (5) The department may contract with Montana corporations to operate a day reporting program as an
20 alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015.
21 The department shall adopt by rule the requirements for a day reporting program, including but not limited to
22 requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance
23 with any conditions of probation, such as drug testing.

24 (6) Rules adopted by the department pursuant to subsection (1)(a) may not amend or alter the statutory
25 powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and
26 expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants,
27 restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited
28 at any location without community support. The prerelease siting, establishment, and expansion must be subject
29 to, and the rules must include, a reasonable mechanism for a determination of community support for or objection
30 to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment,

1 and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

2 (7) (A) The department shall revise, maintain, and fully implement the policy known as the Montana
3 incentives and interventions grid.

4 (B) The grid must:

5 (i) guide responses to negative and positive behavior by people under supervision by the department,
6 including responses to violations of supervision conditions in a swift, certain, and proportional manner. ~~The grid~~
7 must;

8 (ii) include guidance and procedures to determine when and how to:

9 ~~(a)~~(A) request a warrant or arrest without a warrant;

10 ~~(b)~~(B) use a 72-hour detention;

11 ~~(c)~~(C) initiate an intervention hearing;

12 ~~(d)~~(D) seek departmental approval to use up to 90-day interventions; ~~and~~

13 ~~(e)~~(E) exhaust AND DOCUMENT violations responses before initiating the revocation process; AND

14 (F) RECOMMEND THE LEAST RESTRICTIVE PLACEMENT FOR OFFENDERS BASED ON THE RESULT OF A VALIDATED
15 RISK AND NEEDS ASSESSMENT. PLACEMENT DECISIONS MUST BE DOCUMENTED IN THE OFFENDER'S FILE AND MUST
16 INDICATE ANY OTHER LESS SECURE SANCTION OPTIONS CONSIDERED BY THE PROBATION AND PAROLE OFFICER BEFORE
17 UTILIZING A HIGHER LEVEL OF CUSTODY.

18 (8) The department shall:

19 (A) REVIEW THE GRID EVERY 5 YEARS TO ENSURE IT ADHERES TO EVIDENCE-BASED PRACTICES AND THAT USE
20 OF SANCTIONS AND INCENTIVES BY PROBATION AND PAROLE OFFICERS IS CONSISTENT ACROSS THE STATE;

21 ~~(a)~~(B) provide information and training on the grid for probation and parole officers and supervisors and
22 for members and staff of the board of pardons and parole; ~~and~~

23 ~~(b)~~(C) offer information and training on the grid to district court judges, prosecution and defense
24 attorneys, law enforcement personnel, ~~and~~ county detention center personnel; CONTRACTED SERVICE PROVIDERS,
25 AND OTHER INTERESTED PERSONNEL;

26 (D) ENSURE THE GUIDANCE AND PROCEDURES ESTABLISHED IN THE GRID GIVE CONSIDERATION TO COMMUNITY
27 SAFETY AND THE NEEDS OF THE VICTIM AND OFFENDER;

28 (E) COLLECT DATA RELATING TO PLACEMENT DECISIONS BASED ON THE GRID; AND

29 (F) AGGREGATE DATA COLLECTED AND PROVIDE A REPORT TO THE LAW AND JUSTICE INTERIM COMMITTEE EACH
30 BIENNIUM."

2 NEW SECTION. SECTION 6. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

3 - END -



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2019 Biennium

Bill #	SB0063	Title:	Revise laws related to supervision of offenders/defendants
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Primary Sponsor:	Wolken, Cynthia	Status:	As Introduced
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- | | | |
|---|--|--|
| ☐ Significant Local Gov Impact | ☐ Needs to be included in HB 2 | ☐ Technical Concerns |
| ☐ Included in the Executive Budget | ☐ Significant Long-Term Impacts | ☐ Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2018 Difference</u>	<u>FY 2019 Difference</u>	<u>FY 2020 Difference</u>	<u>FY 2021 Difference</u>
Expenditures:				
General Fund	\$0	(\$76,818)	(\$77,970)	(\$79,140)
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>\$0</u>	<u>\$76,818</u>	<u>\$77,970</u>	<u>\$79,140</u>

Description of fiscal impact: SB 63 would likely reduce the number of petitions to revoke suspended or deferred sentences filed by the state in District Courts. The Office of the State Public Defender (OPD) would therefore see a modest decrease in caseloads.

FISCAL ANALYSIS

Assumptions:

Office of the State Public Defender (OPD)

- OPD has the statutory obligation to represent individuals charged with a crime who cannot afford to hire counsel, represent individuals on direct appeal and to provide counsel if there is a conflict of interest.
- The number of new cases of this type received by OPD in FY 2016 is approximately 1,768.
- OPD assigns cases to its attorneys based on a weighted case system. Each District Court revocation case has a "weight" of seven hours.
- OPD cannot quantify the anticipated decrease in petition to revoke cases. However, if OPD were to assume there may be a decrease of approximately 10% this would total approximately 177 cases per year based on the number of those cases received in FY 2016. ($1,768 \times 10\% = 177$).
- The agency estimates a reduction of approximately 1,239 hours of attorney work time per year based on these cases. ($177 \times 7 = 1,239$ hours).
- The hourly contract attorney rate is \$62/hour. Savings to the agency for a full year are estimated at \$76,818 for FY 2019. ($1,239 \times \$62 = \$76,818$).

7. It is assumed the bill is effective October 1, 2017. Agency staff would need to work existing cases during FY 2018. Therefore, the savings is not reflected until FY 2019.
8. A 1.5% per year inflation factor is applied in the 2021 biennium.

Department of Corrections

9. The Department of Corrections would request that offenders on supervision who have complied with the conditions of their supervision be conditionally discharged, shortening overall sentences.
10. This bill would increase the workload for probation and parole officers by increasing the number of offenders on supervision in the community and increasing the filing and reporting needs.
11. The bill could potentially shorten the length of supervision sentences for offenders, which could help mitigate the need for additional probation and parole officers over time. The Department of Corrections would review the effects of this proposed legislation prior to the FY 2019 session.
12. The amendment to add Section 36 to the Montana Constitution, known as Marsy's Law, substantially expands the definition of a victim and requires that victims be notified of and have the option to be present at all proceedings that involve preparing an offender for actual or potential release or alternative placement. The Department of Corrections therefore anticipates that the implementation of Marsy's Law will increase the cost of any bill that could involve victim notification.

Judicial Branch

13. This bill creates a 60 day time requirement for an offender to be brought before a judge when a petition for revocation of a suspended or deferred sentence is filed. District courts are required by law to give child abuse and neglect cases highest priority in setting hearing dates. The additional deadlines imposed by this bill may delay adjudication of other case types.
14. The Judicial Branch is unable to estimate the increase or decrease of judicial workload or the fiscal impact. The cumulative impact of legislation such as this may eventually require additional judicial resources to avoid further backlog in district court case processing

	<u>FY 2018</u> <u>Difference</u>	<u>FY 2019</u> <u>Difference</u>	<u>FY 2020</u> <u>Difference</u>	<u>FY 2021</u> <u>Difference</u>
<u>Fiscal Impact:</u>				
<u>Expenditures:</u>				
Operating Expenses	\$0	(\$76,818)	(\$77,970)	(\$79,140)
TOTAL Expenditures	\$0	(\$76,818)	(\$77,970)	(\$79,140)
<u>Funding of Expenditures:</u>				
General Fund (01)	\$0	(\$76,818)	(\$77,970)	(\$79,140)
TOTAL Funding of Exp.	\$0	(\$76,818)	(\$77,970)	(\$79,140)
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
TOTAL Revenues	\$0	\$0	\$0	\$0
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	\$0	\$76,818	\$77,970	\$79,140

*Sponsor's Initials*_____
*Date*_____
*Budget Director's Initials*_____
Date

MINUTES

MONTANA SENATE 65th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Keith Regier, on January 17, 2017 at 8:00 A.M., in Room 303 Capitol

ROLL CALL

Members Present:

Sen. Keith Regier, Chair (R)
Sen. Jen Gross (D)
Sen. Steve Hinebaugh (R)
Sen. Jedediah Hinkle (R)
Sen. Margaret (Margie) MacDonald (D)
Sen. Mary Moe (D)
Sen. Diane Sands (D)
Sen. Nels Swandal (R)
Sen. Chas Vincent (R)

Members Excused: Sen. Jennifer Fielder, Vice Chair (R)
Sen. Scott Sales (R)

Members Absent: None

Staff Present: Julianne Burkhardt, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 59, 1/9/2017; SB 60, 1/9/2017; SB 61, 1/9/2017; SB 63, 1/9/2017; SB 64, 1/9/2017
Executive Action: SB 90-Do Pass As Amended

00:00:30 Chairman Regier

HEARING ON SB 59

Opening Statement by Sponsor:

00:01:55 Sen. Cynthia Wolken (D), SD 48, opened the hearing on SB 59, Generally revise criminal justice laws.

[EXHIBIT\(jus12a01\)](#)

Proponents' Testimony:

00:08:38 Kris Hansen, member, Montana Commission on Sentencing

[EXHIBIT\(jus12a02\)](#)

00:13:19 Deb Matteucci, director, Montana Board of Crime Control

00:14:49 Carl Reynolds, senior legal counsel, Council on State Government Justice Center (CSGJC)

[EXHIBIT\(jus12a03\)](#)

00:17:35 Sheryl Wood, Montana Association of Counties

00:20:07 Mark Murphy, Montana County Attorneys Association

00:21:39 Steve Cape, Montana Coalition for Safety and Justice

00:22:12 Robin Turner, Montana Coalition Against Domestic and Sexual Violence

00:23:06 John Wilkinson, chairman, Lewis and Clark Advisory Council on Mental Health; member, Citizens Advisory Council for Lewis and Clark County Jail

00:27:19 S. K. Rossi, ACLU/Montana

Opponents' Testimony:

None

Informational Testimony:

00:28:50 Adrienne Slaughter, Montana Department of Corrections (DOC)

Questions from Committee Members and Responses:

00:29:15 Sen. Sands

00:29:25 Ms. Slaughter, DOC

00:31:09 Sen. Moe

00:32:04 Mr. Reynolds, CSGJC

00:33:22 Chairman Regier

00:33:43 Sen. Wolken

Closing by Sponsor:

00:35:19 Sen. Wolken

HEARING ON SB 60

Opening Statement by Sponsor:

00:35:38 Sen. Cynthia Wolken (D), SD 48, opened the hearing on SB 60, Generally revise criminal justice laws.

Proponents' Testimony:

00:38:24 Carl Reynolds, senior legal counsel, Council on State Government Justice Center (CSGJC)

EXHIBIT(jus12a04)

00:40:43 Sheryl Wood, Montana Association of Counties

00:41:31 John Wilkinson, chairman, Lewis and Clark Advisory Council on Mental Health; member, Citizens Advisory Council for Lewis and Clark County Jail

Opponents' Testimony:

None

Informational Testimony:

00:42:58 Adrienne Slaughter, Montana Department of Corrections (DOC)

Questions from Committee Members and Responses:

00:43:19 Sen. MacDonald

00:43:45 Ms. Slaughter, DOC

00:45:15 Sen. Moe

00:45:28 Sen. Wolken

00:46:08 Sen. Moe

00:46:27 Ms. Slaughter

00:47:18 Annette Carter, re-entry program specialist, Montana Department of Corrections

00:50:03 Sen. Vincent

00:50:54 Mark Murphy, Montana County Attorneys Association

00:53:45 Sen. Hinkle

00:54:17 Sen. Wolken

00:55:32 Sen. MacDonald

00:56:01 Mr. Reynolds, CSGJC

00:58:11 Sen. Sands

00:58:33 Mark Pelka, Council on State Government Justice Center

01:02:15 Sen. Swandal

01:02:58 Sen. Wolken

Closing by Sponsor:

01:04:19 Sen. Wolken

HEARING ON SB 61

Opening Statement by Sponsor:

01:06:01 Sen. Cynthia Wolken (D), SD 48, opened the hearing on SB 61, Require certain facilities providing behavioral health srvcs to be lic by DPHHS.

Proponents' Testimony:

01:07:08 Carl Reynolds, senior legal counsel, Council on State Government Justice Center

[EXHIBIT\(jus12a05\)](#)

Opponents' Testimony:

None

Informational Testimony:

01:08:21 Adrienne Slaughter, Montana Department of Corrections

01:08:38 Mark Murphy, Alternatives Incorporated Pre-Release Center, Billings (AIPC)

01:09:05 Brian Watson, quality assurance division, Department of Public Health and Human Services (DPHHS)

Questions from Committee Members and Responses:

01:09:32 Sen Swandal

01:10:02 Mr. Murphy, AIPC

01:12:11 Sen. Vincent

01:13:06 Mr. Watson, DPHHS

01:14:37 Sen. Vincent

01:15:08 Sen. Wolken

01:17:14 Sen. MacDonald

01:17:43 Sen. Wolken

01:19:42 Sen. Moe

01:20:11 Mr. Watson

01:21:09 Chairman Regier

01:21:30 Mr. Watson

Closing by Sponsor:

01:22:00 Sen. Wolken

HEARING ON SB 63

Opening Statement by Sponsor:

01:22:19 Sen. Cynthia Wolken (D), SD 48, opened the hearing on SB 63, Revise laws related to supervision of offenders/defendants.

Proponents' Testimony:

01:24:50 Adrienne Slaughter, Montana Department of Corrections (DOC)
01:28:08 Carl Reynolds, senior legal counsel, Council on State Government Justice Center

EXHIBIT(jus12a06)

01:33:48 Peter Ohman, Montana Office of Public Defenders Office (OPD)
01:36:07 Steve Cape, Montana Coalition for Safety and Justice
01:39:33 S. K. Rossi, ACLU/Montana
01:41:16 John Wilkinson, chairman, Lewis and Clark Advisory Council on Mental Health, member, Citizens Advisory Council for Lewis and Clark County Jail
01:42:16 Sheryl Wood, Montana Association of Counties

Opponents' Testimony:

01:43:58 MaryAnn Ries, Pondera County attorney, Montana County Attorneys Association; member, Montana Commission on Sentencing
01:48:41 Mark Murphy, Montana County Attorneys Association, Montana (MCCA), Montana Chiefs of Police (MCOP), Montana Police Protective Association (MPPA), Alternatives Incorporated Pre-Release Center (AIPC), Billings
01:48:06 Sen. Sales entered the hearing room.

Informational Testimony:

None

Questions from Committee Members and Responses:

01:59:50 Sen. Swandal
02:00:32 Sen. Wolken
02:01:54 Mr. Ohman, OPD
02:02:50 Sen. Swandal
02:03:28 Ms. Slaughter, DOC
02:03:52 Sen. Hinkle
02:05:04 Sen. Wolken
02:06:05 Sen. Gross
02:06:26 Ms. Slaughter

EXHIBIT(jus12a07)

02:09:12 Sen. MacDonald
02:10:34 Mr. Reynolds, CSGJC

02:13:01 Sen. Moe
02:14:05 Mr. Murphy, MCCA, MCOP, MPPA, AIPC

Closing by Sponsor:

02:20:06 Sen. Wolken

02:23:10 Recess
02:39:32 Reconvene

Sen. Sales left from the hearing room.

HEARING ON SB 64

Opening Statement by Sponsor:

02:39:43 Sen. Cynthia Wolken (D), SD 48, opened the hearing on SB 64, Generally revise laws related to the board of pardons and parole.

Proponents' Testimony:

02:43:03 Carl Reynolds, senior legal counsel, Council on State Government Justice Center

[EXHIBIT\(jus12a08\)](#)

02:45:59 Adrienne Slaughter, Montana Department of Corrections
02:47:48 Gary Mihelish, self
02:53:49 Sheryl Wood, Montana Association of Counties
02:55:21 Steve Cape, Montana Coalition for Safety and Justice
02:58:25 S. K. Rossi, ACLU/Montana

Opponents' Testimony:

None

Informational Testimony:

02:59:53 Christine Slaughter, interim director, Board of Pardons and Parole (BOPP)

Questions from Committee Members and Responses:

03:00:21 Sen. Sands
03:00:28 Sen. Wolken
03:01:37 Sen. Swandal
03:02:11 Sen. Wolken
03:03:03 Sen. Hinkle
03:04:04 Sen. Wolken
03:05:01 Ms. Slaughter, BOPP
03:05:41 Sen. Moe
03:05:59 Ms. Slaughter

03:07:45 Sen. Wolken
03:12:56 Sen. Vincent
03:11:35 Sen. MacDonald
03:12:18 Ms. Slaughter
03:13:42 Sen. Wolken
03:15:06 Sen. Hinebaugh
03:15:21 Sen. Wolken

03:17:08 Sen. Moe (clarification from previous comment)

Closing by Sponsor:

03:16:30 Sen. Wolken

EXECUTIVE ACTION ON SB 90

03:19:44 **Motion:** Sen. Swandal moved that **SB 90 DO PASS.**

03:20:09 **Motion:** Sen. Swandal moved that **SB 90 BE AMENDED.**
EXHIBIT(jus12a09)

Discussion:

03:21:13 Sen. Sands
03:21:26 Sen. Swandal

03:21:38 **Vote:** Motion carried unanimously by voice vote. Sen. Fielder and Sen. S. Sales voted by proxy.

03:22:02 **Motion:** Sen. Swandal moved that **SB 90 DO PASS AS AMENDED.**

Discussion:

03:22:44 Sen. Vincent

03:22:57 **Vote:** Motion carried unanimously by roll call vote. Sen. Fielder and Sen. S. Sales voted by proxy.

ADJOURNMENT

Adjournment: 11:24 A.M.

Pam Schindler, Secretary

ps

Additional Documents:

EXHIBIT([jus12aad.pdf](#))

Exhibit No. 6Date: 11/17/17Bill No. SB63

Senate Bill 63 – Generally revise laws related to supervision of offenders/defendants
Justice Reinvestment in Montana

Senate Bill 63 is part of a package of bills supported by the Montana Commission on Sentencing that together avert growth in prison and supervision populations, increase public safety, reduce recidivism, and provide tools to counties to ease pressures on jail populations. The policy framework in these bills is estimated to avert forecasted growth in Montana's prison population and avert \$69 million in future costs.

Senate Bill 63 reduces recidivism and increases public safety by:

- Prioritizing probation resources for people who are most likely to reoffend by requiring probation and parole officers to notify the court to request that a person on supervision who has complied with the conditions of his or her supervision be conditionally discharged at 9 months for low-risk people, 18 months for moderate-risk people, and 24 months for high-risk people.

The bill, in conjunction with Senate Bill 64, averts prison population growth and \$15.7 million in future costs in FY2018-2019 by:

- Allowing Department of Corrections (DOC) hearings officers to impose up to 30-day sanctions, or up to 90-day sanctions with department approval, for probation compliance violations without resorting to a petition to the court.
- Limiting imprisonment for probation compliance violations to nine months once the appropriate violation responses under DOC's incentives and interventions grid have been exhausted.

Rationale

Conditional Discharge

Probation sentences in Montana are lengthy.¹ Among the people whose probation terms ended successfully in FY2015, more than 60 percent had served more than three years on supervision, and 30 percent had served more than five years.²

This bill prioritizes probation resources for people who are most likely to reoffend by requiring probation and parole officers to notify the court to request that a person on supervision who has complied with the conditions of his or her supervision be conditionally discharged. This notification will occur according to a schedule based on the assessed risk and needs of each individual: after a person assessed as being at a low risk of reoffending has served 9 months, a moderate-risk person has served 18 months, and a high-risk person has served 24 months. The notification will be provided to the victim, if any, the county attorney, the probationer, and defense counsel. Unless there is an objection and a request for a hearing from the county attorney on behalf of the victim, or the court requires a hearing, the person will be conditionally discharged 30 days after the notification.

¹ CSG Justice Center analysis of Montana Department of Corrections admissions & offense history data, FY2012; A person's likelihood of recidivating diminishes significantly over time. In Montana, among a cohort of people who started their probation terms in FY2012 and were resentenced within three years, 47 percent were resentenced in the first year, and 80 percent were resentenced within two years.

² CSG Justice Center analysis of DOC releases data, FY2015.

Senate Bill 63 continued

People who are conditionally discharged are no longer on supervision, but can be placed back onto supervision for the duration of the rest of original probation sentence. By allowing for the discharge of compliant low- and medium-risk people from probation within a relatively short period of time, this bill enables probation and parole officers to focus resources on people during the first two years of supervision—the time when recidivism is most likely. Determining the length of supervision terms based on risk level enables probation and parole officers to prioritize their time for people at the highest risk of reoffending.

Compliance Violations

Probationers who are revoked to prison for violating conditions of their supervision spend an average of 23 months in prison prior to being released.³

This bill also allows DOC hearings officers to impose up to 30-day sanctions, or up to 90-day sanctions with department approval, for probation compliance violations without resorting to a petition to the court. This bill limits imprisonment for compliance violations to nine months once the appropriate violation responses under DOC's incentives and interventions grid have been exhausted. This bill also allows these people to be sanctioned in jails and alternative facilities, funded by the state, in lieu of prison.

Compliance violations, which do not involve a new crime, are violations of imposed conditions of supervision and can include missing a supervision appointment, failing to get a job, or violating a curfew, among others. Limiting the term of incarceration for people who violate conditions of their supervision but were not charged with new crimes can ensure more appropriate and effective consequences for these people. Responses that are proportional to the seriousness of the violations can improve the supervisee's perception that responses are fair and objective, which can in turn deter future unwanted behaviors.⁴

³ CSG Justice Center analysis of DOC releases data, FY2015.

⁴ Faye Taxman, David Soule, and Adam Gelb, "Graduated Sanctions: Stepping into Accountable Systems and Offenders," *Prison Journal*, 1999, 79(2): 182–205.

Exhibit No. 7Date: 11/17/17
 Bill No. SB 62

<i>Incentives</i>	<i>Desired Behavior/Task</i>	<i>Condition/Case Plan Goal</i>	<i>Undesired Behavior</i>	<i>Intervention Level (L)</i>	<i>Intervention Level (M)</i>	<i>Intervention Level (H)</i>
• Verbal praise • Reduced number of contacts • Letter of recognition/certificate • Reduced number of UAs • Request early discharge • Extend curfew • Approved associates ❖ Reduced supervision level ❖ Waive supervision fee • Other incentive	• Reports all law enforcement contact • Pro-social activities • Appropriate peers and activities • Clean UAs • Positive decision making • Registers as SVOR offender • Provide DNA sample • Other behaviors/tasks identified in case plan	Laws and Conduct	• Failed to report law enforcement contact (L) • New documented law violation other than misdemeanor or felony (L) • Failed to register as a SVOR offender (H) • New misdemeanor conviction (H) • New felony conviction (H) • Failed to provide DNA (H) • Felon in possession of a firearm (H)	• Verbal reprimand • Increased contacts • Increased UA/BA • Other programs • Program assignment • Associate restrictions • Curfew ❖ Community service (1-10 hrs unless stated in conditions)	• Written reprimand • Increased contacts • Increased UA/BA • Other programs • Meeting w/supervisor • Program assignment • Curfew ❖ Community service (11-20 hrs unless stated in conditions) ❖ EM (7-21 days) ❖ Supervision level override	• Increased UA/BA • Mental health TX • Substance abuse TX • Other programs • Cognitive program • Curfew ❖ Community service (21-30 hrs unless stated in conditions) ❖ Supervision level override ❖ Revocation ➤ House Arrest ➤ ESP/ISP/Day Reporting ➤ Jail options: 1st jail (1-3 days) 2nd jail (1-10 days) 3rd jail (1-30 days) ➤ ACCD sanction bed (30-60 days)
<i>Incentives</i>	<i>Desired Behavior/Task</i>	<i>Condition/Case Plan Goal</i>	<i>Undesired Behavior</i>	<i>Intervention Level (L)</i>	<i>Intervention Level (M)</i>	<i>Intervention Level (H)</i>
• Verbal praise • Reduced number of contacts • Letter of recognition/certificate • Reduced number of UAs • Request early discharge • Extend curfew • Approved associates ❖ Reduced supervision level ❖ Waive supervision fee • Other incentive	• On time for all meetings • Maintain sobriety • Attends support groups • Positive peers • Respects authority • Open communication w/PO • Identify risks/problems w/PO • Other behaviors/tasks identified in case plan • Comply w/signed conditions	Compliance	• Deliberate patterns of non-compliance (H) • Failed to follow PO directive (M) • Dishonesty with PO (L)	• Verbal reprimand • Increased contacts • Increased UA/BA • Other programs • Program assignment • Associate restrictions • Curfew ❖ Community service (1-10 hrs unless stated in conditions)	• Written reprimand • Increased contacts • Increased UA/BA • Other programs • Mental health TX • Substance abuse TX • Cognitive program • Meeting w/supervisor • Program assignment • Curfew ❖ Community service (11-20 hrs unless stated in conditions) ❖ Supervision level override	• Increased contacts • Increased UA/BA • Mental health TX • Substance abuse TX • Other programs • Program assignment • Curfew ❖ Community service (21-30 hrs unless stated in conditions) ❖ Supervision level override ❖ Revocation ➤ House Arrest ➤ ESP/ISP/Day Reporting ➤ Jail options: 1st jail (1-3 days) 2nd jail (1-10 days) 3rd jail (1-30 days) ➤ ACCD sanction bed (30-60 days)
• Unshaded = PO Authority • Shaded = ❖ Need Supervisor Approval ➤ Intervention Hearing						

Incentives	Desired Behavior/Task	Condition/Case Plan Goal	Undesired Behavior	Intervention Level (L)	Intervention Level (M)	Intervention Level (H)
• Verbal praise • Reduced number of contacts • Letter of recognition/certificate • Reduced number of UAs • Request early discharge • Extend curfew • Approved associates ❖ Reduced supervision level ❖ Waive supervision fee • Other incentive	• Positive decision making • Appropriate peers and activities • Stable living arrangements • Responsible travel planning • Other behaviors/tasks identified in case plan	Travel	• Curfew violation – off schedule/late returning home from a scheduled activity (L) • Location/destination violation (L) • Fails to obtain or abide by travel permit restrictions (L)	• Verbal reprimand • Increased contacts • Increased UA/BA • Other programs • Program assignment • Associate restrictions • Curfew ❖ Community service (1-10 hrs unless stated in conditions)		
Incentives	Desired Behavior/Task	Condition/Case Plan Goal	Undesired Behavior	Intervention Level (L)	Intervention Level (M)	Intervention Level (H)
• Verbal praise • Reduced number of contacts • Letter of recognition/certificate • Reduced number of UAs • Request early discharge • Extend curfew • Approved associates ❖ Reduced supervision level ❖ Waive supervision fee • Other incentive	• Open communication w/PO re: changes/issues • Seeks appropriate residence and roommates • Maintains clean residence • Demonstrates positive planning • Maintains employment • Informs/educates family and roommates • Other behaviors/tasks identified in case plan • Discloses potential risks (pets, cameras, radios)	Residence	• Changes residence without prior approval (M) • Refusal of a search (H) • Refusal of a compliance inspection (H) • Refusal of a home visit (H) • Tampering or interfering with EM or GPS equipment (H) • Possessing surveillance equipment prohibited by granting authority (H)	• Verbal reprimand • Increased contacts • Increased UA/BA • Other programs • Program assignment • Associate restrictions • Curfew ❖ Community service (1-10 hrs unless stated in conditions)	• Written reprimand • Increased contacts • Increased UA/BA • Other programs • Cognitive program • Meeting w/supervisor • Program assignment • Curfew ❖ Community service (11-20 hrs unless stated in conditions) ❖ EM (7-21 days) ❖ Supervision level override ➤ ACCD sanction bed (30 days)	• Increased contacts • Increased UA/BA • Mental health TX • Substance abuse TX • Other programs • Program assignment • Staffing w/treatment provider • Curfew ❖ Community service (21-30 hrs unless stated in conditions) ❖ EM (22-45 days) ❖ Supervision level override ❖ Other alcohol monitoring device ❖ Revocation ➤ ESP/ISP/Day Reporting ➤ 24/7 ➤ Treatment court ➤ Jail options: 1st jail (1-3 days) 2nd jail (1-10 days) 3rd jail (1-30 days) ➤ ACCD sanction bed (30-60 days)
• Unshaded = PO Authority - Shaded = ❖ Need Supervisor Approval ➤ Intervention Hearing						

Incentives	Desired Behavior/Task	Condition/Case Plan Goal	Undesired Behavior	Intervention Level (L)	Intervention Level (M)	Intervention Level (H)
• Verbal praise • Reduced number of contacts • Letter of recognition/certificate • Reduced number of UAs • Request early discharge • Extend curfew • Approved associates ❖ Reduced supervision level ❖ Waive supervision fee • Other incentive	• Maintain employment • Demonstrates positive planning/priorities • Positive decision making • Personal hygiene • Regularly provides documentation • Appropriate peers and activities • Gains necessary work skills	Employment and School	• Failed to seek employment/enroll in school program (L) • Deliberate failure to maintain employment/school program (M)	• Verbal reprimand • Written behavioral report (1-7 pages) • Increased contacts • Other programs • Associate restrictions • Structured employment search • Curfew ❖ Community service (1-10 hrs unless stated in conditions)	• Written reprimand • Increased contacts • Other programs • Cognitive program • Meeting w/supervisor • Program assignment • Curfew ❖ Community service (11-20 hrs unless stated in conditions) ❖ Supervision level override	
Incentives	Desired Behavior/Task	Condition/Case Plan Goal	Undesired Behavior	Intervention Level (L)	Intervention Level (M)	Intervention Level (H)
• Verbal praise • Reduced number of contacts • Letter of recognition/certificate • Reduced number of UAs • Request early discharge • Extend curfew • Approved associates ❖ Reduced supervision level ❖ Waive supervision fee • Other incentive	• Fulfills court/BOPP/DOC mandated conditions • Pro-social activities • Appropriate peers and activities • Evidence of a recovery-oriented lifestyle	Special Conditions	• Violation of any court-ordered special condition *Not otherwise specified on the grid *PO and supervisor determine violation behavior severity (L, M, H) • Unauthorized contact w/prohibited victim (H) • Contact w/prohibited co-defendant (H) • Associates with person deemed inappropriate by granting authority (L)	• Verbal reprimand • Increased contacts • Increased UA/BA • Mental health TX • Substance abuse TX • Other programs • Program assignment • Associate restrictions • Curfew ❖ Community service (1-10 hrs unless stated in conditions)	• Written reprimand • Increased contacts • Increased UA/BA • Other programs • Mental health TX • Substance abuse TX • Cognitive program • Meeting w/supervisor • Program assignment • Curfew ❖ Community service (11-20 hrs unless stated in conditions) ❖ EM (7-21 days) ❖ Supervision level override	• Increased contacts • Increased UA/BA • Mental health TX • Substance abuse TX • Other programs • Program assignment • Curfew ❖ Community service (21-30 hrs unless stated in conditions) ❖ EM (22-45 days) ❖ Supervision level override ❖ Revocation ➤ ESP/ISP/Day Reporting ➤ Jail options: 1st jail (1-3 days) 2nd jail (1-10 days) 3rd jail (1-30 days) ➤ ACCD sanction bed (30-60 days)
• Unshaded = PO Authority - Shaded = ❖ Need Supervisor Approval ➤ Intervention Hearing						

Incentives	Desired Behavior/Task	Condition/Case Plan Goal	Undesired Behavior	Intervention Level (L)	Intervention Level (M)	Intervention Level (H)
• Verbal praise • Reduced number of contacts • Letter of recognition/certificate • Reduced number of UAs • Request early discharge • Extend curfew • Approved associates ❖ Reduced supervision level ❖ Waive supervision fee • Other incentive	• Payments current • Demonstrates positive planning/priorities • Develops/complies w/restitution plan • Regularly provides documentation • Open communication w/PO • Other behaviors/tasks identified in case plan	Monetary	• Deliberate failure to pay supervision fees (L) • Failed to pay court-ordered obligations (fine/fees) (L) • Deliberate failure to abide by restitution plan (M) • Entered into a contract/account without permission (M) • Unauthorized purchase (M)	• Verbal reprimand • Increased contacts • Increased UA/BA • Other programs • Program assignment • Associate restrictions • Curfew ❖ Community service (1-10 hrs unless stated in conditions)	• Written reprimand • Increased contacts • Increased UA/BA • Other programs • Cognitive program • Meeting w/supervisor • Program assignment • Curfew ❖ Community service (11-20 hrs unless stated in conditions) ❖ EM (7-21 days) ❖ Supervision level override	
Incentives	Desired Behavior/Task	Condition/Case Plan Goal	Undesired Behavior	Intervention Level (L)	Intervention Level (M)	Intervention Level (H)
• Verbal praise • Reduced number of contacts • Letter of recognition/certificate • Reduced number of UAs • Request early discharge • Extend curfew • Approved associates ❖ Reduced supervision level ❖ Waive supervision fee • Other incentive	• Demonstrates positive planning/priorities • Fulfill payment obligations • Open communication w/PO and providers • Maintain sobriety • Schedule/complete evaluation • Positive participation/completed treatment program • Other behaviors/tasks identified in case plan	Treatment and Programs	• Failed to initiate treatment/obtain evaluation (L) • Failed to actively participate/progress with program requirements (M) • Deliberate failure to complete any required treatment (H)	• Verbal reprimand • Increased contacts • Increased UA/BA • Mental health TX • Substance abuse TX • Other programs • Program assignment • Associate restrictions • Curfew ❖ Community service (1-10 hrs unless stated in conditions) ❖ Other alcohol monitoring device	• Written reprimand • Increased contacts • Increased UA/BA • Other programs • Mental health TX • Substance Abuse TX • Cognitive program • Meeting w/supervisor • Program assignment • Curfew ❖ Community service (11-20 hrs unless stated in conditions) ❖ EM (7-21 days) ❖ Supervision level override ❖ Other alcohol monitoring device	• Increased contacts • Increased UA/BA • Mental health TX • Substance abuse TX • Other programs • Program assignment • Curfew ❖ Community service (21-30 hrs unless stated in conditions) ❖ EM (22-45 days) ❖ Supervision level override ❖ Other alcohol monitoring device ❖ Revocation ➤ House Arrest ➤ ESP/ISP/Day Reptg/TAP ➤ 24/7 ➤ Treatment court ➤ Jail options: 1st jail (1-3 days) 2nd jail (1-10 days) 3rd jail (1-30 days) ➤ ACCD sanction bed (30-60 days)
• Unshaded = PO Authority - Shaded = ❖ Need Supervisor Approval ➤ Intervention Hearing						

Incentives	Desired Behavior/Task	Condition/Case Plan Goal	Undesired Behavior	Intervention Level (L)	Intervention Level (M)	Intervention Level (H)
• Verbal praise • Reduced number of contacts • Letter of recognition/certificate • Reduced number of UAs • Request early discharge • Extend curfew • Approved associates ❖ Reduced supervision level ❖ Waive supervision fee • Other incentive	• Positive decision making • Discloses use prior to testing • Discloses thoughts of relapse • Appropriate peers and activities • Open communication w/PO and providers • Maintain sobriety • Stable living arrangements • Identifies risks/problems w/PO • Relapse/prevention planning • Evidence of a recovery-oriented lifestyle • Schedule/complete evaluation • Positive participation/completed treatment program • Other behaviors/tasks identified in case plan	Drugs and Alcohol	• Failed to submit to UA/BA (M) • Admits to usage (honest and forthcoming prior to testing) (L) • -2nd violation (M)* • -3rd violation (H)* • *within 12-month period • Alcohol possession with no known history of abuse (L) • Alcohol possession with known history of abuse (M) • Positive UA (M) • -2nd violation and subsequent violations (H)* • *within 12-month period • Positive BAC (M) • -2nd violation and subsequent violations (H)* • *within 12-month period • Enters an establishment where alcohol is primary source of income (M) • -Enters with known substance abuse history (H) • Tampering with UA (H) • Drug possession (H) • Refusal to submit to UA or BA (H) • Reports under the influence (L, M, H) based on impairment	• Verbal reprimand • Increased contacts • Increased UA/BA • Mental health TX • Substance abuse TX • Other programs • Program assignment • Associate restrictions • Staffing w/treatment provider • Curfew ❖ Community service (1-10 hrs unless stated in conditions) ❖ Other alcohol monitoring device	• Written reprimand • Increased contacts • Increased UA/BA • Other programs • Mental health TX • Substance Abuse TX • Cognitive program • Meeting w/supervisor • Program assignment • Staffing w/treatment provider • Curfew ❖ Community service (11-20 hrs unless stated in conditions) ❖ EM (7-21 days) ❖ Supervision level override ❖ Other alcohol monitoring device	• Increased contacts • Increased UA/BA • Mental health TX • Substance abuse TX • Other programs • Program assignment • Staffing w/treatment provider • Curfew ❖ Community service (21-30 hrs unless stated in conditions) ❖ EM (22-45 days) ❖ Supervision level override ❖ Other alcohol monitoring device ❖ Revocation ➤ ESP/ISP/Day Reptg/TAP ➤ 24/7 ➤ Treatment court ➤ Jail options: 1st jail (1-3 days) 2nd jail (1-10 days) 3rd jail (1-30 days) ➤ ACCD sanction bed (30-60 days)
• Unshaded = PO Authority - Shaded = ❖ Need Supervisor Approval ➤ Intervention Hearing						

<i>Incentives</i>	<i>Desired Behavior/Task</i>	<i>Condition/Case Plan Goal</i>	<i>Undesired Behavior</i>	<i>Intervention Level (L)</i>	<i>Intervention Level (M)</i>	<i>Intervention Level (H)</i>
• Verbal praise • Reduced number of contacts • Letter of recognition/certificate • Reduced number of UAs • Request early discharge • Extend curfew • Approved associates ❖ Reduced supervision level ❖ Waive supervision fee • Other incentive	• Open communication w/PO re: changes/issues • Demonstrates positive planning/priorities • Positive decision making • On time for all meetings • Provides/follows schedule • Other behaviors/tasks identified in case plan	Reporting	• Missed scheduled appointment (L) • Deliberate failure to report when directed (M) • Absconding (H)	• Verbal reprimand • Increased contacts • Increased UA/BA • Other programs • Program assignment • Associate restrictions • Curfew ❖ Community service (1-10 hrs unless stated in conditions)	• Written reprimand • Increased contacts • Increased UA/BA • Other programs • Cognitive program • Meeting w/supervisor • Program assignment • Curfew ❖ Community service (11-20 hrs unless stated in conditions) ❖ EM (7-21 days) ❖ Supervision level override	• Increased contacts • Increased UA/BA • Mental health TX • Substance abuse TX • Other programs • Program assignment • Staffing w/treatment provider • Curfew ❖ Community service (21-30 hrs unless stated in conditions) ❖ EM (22-45 days) ❖ Supervision level override ❖ Other alcohol monitoring device ❖ Revocation ➤ ESP/ISP/Day Reporting ➤ 24/7 ➤ Treatment court ➤ Jail options: 1st jail (1-3 days) 2nd jail (1-10 days) 3rd jail (1-30 days) ➤ ACCD sanction bed (30-60 days)
• Unshaded = PO Authority - Shaded = ❖ Need Supervisor Approval ➤ Intervention Hearing						

MINUTES

MONTANA SENATE 65th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Keith Regier, on January 25, 2017 at 9:00 AM, in Room 303 Capitol

ROLL CALL

Members Present:

Sen. Keith Regier, Chair (R)
Sen. Jennifer Fielder, Vice Chair (R)
Sen. Jen Gross (D)
Sen. Steve Hinebaugh (R)
Sen. Jedediah Hinkle (R)
Sen. Margaret (Margie) MacDonald (D)
Sen. Mary Moe (D)
Sen. Scott Sales (R)
Sen. Diane Sands (D)
Sen. Nels Swandal (R)
Sen. Chas Vincent (R)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	SB 118, 1/18/2017; SB 122, 1/18/2017; SB 123, 1/18/2017
Executive Action:	SB 61-Tabled, SB 66-Tabled, SB 122-Tabled, SJ 4-Tabled, SB 45-Do Pass, SB 59-Do Pass, SB 60-Do Pass, SB 63-Do Pass As Amended, SB 65-Do Pass As Amended, SB 67-Do Pass, SB 71-Do Pass, SB 107-Do Pass, SJ 3-Be Adopted, SB 64-Do Pass As Amended-Motion Withdrawn

00:00:30 Chairman Regier

HEARING ON SB 118

Opening Statement by Sponsor:

00:02:37 Sen. Mary McNally (D), SD 24, opened the hearing on SB 118, Provide for uniform act regarding fiduciary access to digital assets.

Proponents' Testimony:

00:08:22 Ed Eck, retired law professor, University of Montana; commissioner, Uniform Law Commission (ULC)

[EXHIBIT\(jus18a01\)](#)

[EXHIBIT\(jus18a02\)](#)

00:13:10 Bill Roberts, volunteer advocate, AARP

[EXHIBIT\(jus18a03\)](#)

00:16:30 Carin McClain, Montana's Credit Unions

00:18:01 Dirk Williams, attorney, member, State Bar of Montana; Business, Estates, Trusts, Taxation and Real Property Council (BETTR); American College of Trust and Estate Council

[EXHIBIT\(jus18a04\)](#)

[EXHIBIT\(jus18a05\)](#)

00:23:31 Aimee Grmoljez, Montana Bankers Association

Opponents' Testimony:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

00:24:41 Sen. Moe

00:25:15 Mr. Eck, ULC

00:27:58 Chairman Regier

00:28:14 Mr. Eck

00:28:28 Chairman Regier

00:28:43 Mr. Williams, BETTR

Closing by Sponsor:

00:29:05 Sen. McNally

[EXHIBIT\(jus18a06\)](#)

HEARING ON SB 122

Opening Statement by Sponsor:

00:32:51 Sen. Margaret (Margie) MacDonald (D), SD 26, opened the hearing on SB 122, Generally revise criminal justice laws.

Proponents' Testimony:

None

Opponents' Testimony:

00:35:04 Mark Murphy, Montana County Attorneys Association

Informational Testimony:

None

Questions from Committee Members and Responses:

00:35:55 Sen. Fielder
00:36:18 Sen. MacDonald
00:37:21 Sen. Hinkle
00:37:38 Sen. MacDonald
00:38:09 Sen. Moe

Closing by Sponsor:

00:38:43 Sen. MacDonald

HEARING ON SB 123

Opening Statement by Sponsor:

00:39:09 Sen. Nels Swandal (R), SD 30, opened the hearing on SB 123, Revise marriage license laws to allow nonresidents to get licenses in any county.

Proponents' Testimony:

00:40:10 Phyllis Smith, clerk of District Court, Fergus County, Montana Association of Clerks of District Courts

Opponents' Testimony:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

00:42:06 Sen. Fielder
00:42:33 Sen. Swandal

Closing by Sponsor:

00:43:41 Sen. Swandal

EXECUTIVE ACTION ON SB 45

00:46:17 **Motion:** Sen. MacDonald moved that **SB 45 DO PASS.**

Discussion:

00:46:35 Sen. Swandal

00:46:56 **Vote:** Motion carried unanimously by roll call vote.

EXECUTIVE ACTION ON SB 59

00:47:48 **Motion:** Sen. Fielder moved that **SB 59 DO PASS.**

Discussion:

00:48:06 Sen. Swandal

Sen. MacDonald left the room.

00:48:38 **Vote:** Motion carried 9-2 by roll call vote with Sen. Hinebauch and Sen. Sales voting no. Sen. MacDonald voted by proxy.

Sen. MacDonald returned to the room.

EXECUTIVE ACTION ON SB 60

00:49:39 **Motion:** Sen. Fielder moved that **SB 60 DO PASS.**

Discussion:

00:49:51 Sen. Swandal
00:50:46 Sen. Sands

00:51:14 **Vote:** Motion carried 7-4 by roll call vote with Sen. Hinebauch, Sen. Hinkle, Sen. Sales and Sen. Vincent voting no.

EXECUTIVE ACTION ON SB 61

00:52:11 **Motion:** Sen. Fielder moved that **SB 61 DO PASS.**

Discussion:

00:52:27 Sen. MacDonald

00:53:00 Sen. Sands

00:53:27 **Vote:** Motion failed 4-7 by roll call vote with Sen. Gross, Sen. MacDonald, Sen. Moe and Sen. Sands voting aye.

00:53:57 **Motion/Vote:** Sen. Sales moved that **SB 61 BE TABLED AND THE VOTE REVERSED.** Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 63

00:54:21 **Motion:** Sen. Fielder moved that **SB 63 DO PASS.**

Discussion:

00:55:14 Sen. MacDonald

00:56:37 **Motion:** Sen. Swandal moved that **SB 63 BE AMENDED WITH ONLY SECTIONS 2, 3, 5, 6, and 7, EXCLUDING SECTIONS 1 and 4 of AMENDMENT SB006301.AJB.**

[**EXHIBIT\(jus18a07\)**](#)

00:57:35 Chairman Regier

00:57:46 Without objection, Sen. Swandal withdrew his motion.

00:57:55 **Motion/Vote:** Sen. Swandal moved to **SEGREGATE SECTIONS 2, 3, 5, 6, and 7 of AMENDMENT SB006301.AJB.** Motion carried unanimously by voice vote.

00:58:51 **Motion:** Sen. Swandal moved that **SB 63 BE AMENDED WITH SECTIONS 2, 3, 5, 6, and 7 of AMENDMENT SB006301.AJB.**

Discussion:

01:01:27 Sen. MacDonald

01:01:53 **Vote:** Motion carried unanimously by roll call vote.

01:02:09 **Motion/Vote:** Sen. Fielder moved that **SB 63 DO PASS AS AMENDED.** Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 64

01:03:10 **Motion:** Sen. Fielder moved that **SB 64 DO PASS.**

Discussion:

01:03:35 Sen. Swandal
01:04:02 Chairman Regier

01:04:52 **Motion:** Sen. Moe moved that **SB 64 BE AMENDED.**
EXHIBIT(jus18a08)

Discussion:

01:06:41 Sen. Sands
01:07:40 Sen. Moe
01:08:03 Sen. Swandal
01:08:25 Sen. Fielder
01:09:20 Sen. Swandal
01:09:23 Sen. Moe
01:10:24 Sen. Vincent
01:11:23 Chairman Regier

01:12:07 **Vote:** Motion failed 5-6 by roll call vote with Sen. Gross, Sen. MacDonald, Sen. Moe, Sen. Sands and Sen. Swandal voting aye.

01:12:16 **Motion/Vote:** Sen. Swandal moved that **SECTION 3 BE SEGREGATED FROM AMENDMENT SB006401.AJB.** Motion carried unanimously by voice vote.
EXHIBIT(jus18a09)

01:13:27 **Motion:** Sen. Swandal moved that **SB 64 BE AMENDED WITH SECTION 3 OF AMENDMENT SB006401.AJB.**

Discussion:

01:13:56 Sen. MacDonald

01:14:41 **Vote:** Motion carried unanimously by voice vote.

01:14:57 **Motion/Vote:** Sen. Swandal moved that **SECTION 2 BE SEGREGATED FROM AMENDMENT SB006401.AJB.** Motion carried unanimously by voice vote.

Discussion:

01:16:21 Sen. Moe
01:16:36 Sen. Swandal
01:16:49 Sen. Moe
01:17:03 Sen. Swandal

01:17:44 **Motion/Vote:** Sen. Swandal moved that **SB 64 BE AMENDED WITH SECTION 2 OF AMENDMENT SB006401.AJB**. Motion carried unanimously by voice vote.

01:18:00 **Motion:** Sen. Fielder moved that **SB 64 DO PASS AS AMENDED**.

Discussion:

01:18:11 Sen. Sales
 01:19:12 Sen. Wolken
 01:21:48 Sen. Fielder
 01:22:10 Sen. Wolken
 01:22:59 Sen. Vincent
 01:23:43 Sen. Wolken
 01:25:20 Sen. Sands
 01:26:03 Sen. Wolken
 01:27:25 Sen. Hinkle
 01:27:41 Chairman Regier

01:28:01 Without objection, Sen. Fielder withdrew the **SB 64 DO PASS AS AMENDED** motion.

01:29:05 Chairman Regier

01:29:52 Brief Recess
 01:39:15 Reconvene

EXECUTIVE ACTION ON SB 65

01:39:30 **Motion:** Sen. Fielder moved that **SB 65 DO PASS**.

01:40:41 **Motion:** Sen. Moe moved that **SB 65 BE AMENDED**.
[EXHIBIT\(jus18a10\)](#)

Discussion:

01:41:59 Sen. Swandal
 01:42:04 Sen. Moe
 01:42:12 Sen. Fielder
 01:42:56 Sen. Moe
 01:43:04 Sen. MacDonald
 01:43:47 Chairman Regier
 01:43:52 Todd Everts, Legislative Services Division
 01:43:54 Chairman Regier

01:44:15 **Vote:** Motion carried unanimously by voice vote.

01:44:33 **Motion:** Sen. Fielder moved that **SB 65 DO PASS AS AMENDED**.

Discussion:

01:44:44 Sen. Hinkle
 01:45:45 Chairman Regier
 01:45:56 Sen. Gross
 01:46:41 Sen. Fielder
 01:47:17 Sen. Wolken
 01:48:54 Sen. Sands
 01:50:44 Sen. Sales
 01:52:15 Sen. Hinkle
 01:52:47 Sen. MacDonald
 01:54:58 Sen. Gross
 01:55:45 Sen. Sands
 01:56:03 Chairman Regier
 01:56:19 Sen. Fielder
 01:56:50 Sen. Wolken
 01:57:49 Sen. Moe
 01:58:32 Chairman Regier
 01:59:26 Sen. Sands
 02:00:24 Sen. Vincent

02:03:16 **Vote:** Motion carried 8-3 by roll call vote with Sen. Hinebauch, Sen. Hinkle and Sen. S. Sales voting no.

EXECUTIVE ACTION ON SB 66

02:04:15 **Motion:** Sen. Fielder moved that **SB 66 DO PASS.**

02:05:00 **Motion/Vote:** Sen. Swandal moved that **SB 66 BE AMENDED.** Motion carried unanimously by voice vote.

EXHIBIT(jus18a11)

02:06:30 **Motion:** Sen. Fielder moved that **SB 66 DO PASS AS AMENDED.**

Discussion:

02:06:44 Sen. Hinkle
 02:08:14 Sen. Vincent
 02:08:46 Sen. Swandal
 02:09:51 Sen. Sands
 02:10:52 Sen. Sales
 02:12:54 Chairman Regier
 02:13:08 Sen. Fielder
 02:14:22 Sen. MacDonald
 02:15:40 Sen. Gross
 02:16:43 Sen. Sands
 02:17:05 Sen. Sales
 02:17:10 Sen. Sands
 02:17:30 Sen. Sales
 02:18:07 Sen. Swandal

02:19:02 **Vote:** Motion failed 5-6 by roll call vote with Sen. Gross, Sen. MacDonald, Sen. Moe, Sen. Sands and Sen. Swandal voting aye.

02:19:39 **Motion/Vote:** Sen. Fielder moved that **SB 66 BE TABLED AND THE VOTE REVERSED**. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 67

02:20:08 **Motion:** Sen. Fielder moved that **SB 67 DO PASS**.

Discussion:

02:20:28 Sen. Swandal

02:20:53 Sen. Sands

02:21:47 **Vote:** Motion carried unanimously by roll call vote.

EXECUTIVE ACTION ON SB 71

02:22:38 **Motion:** Sen. Gross moved that **SB 71 DO PASS**.

Discussion:

02:23:21 Sen. Swandal

02:23:35 **Vote:** Motion carried unanimously by roll call vote.

EXECUTIVE ACTION ON SB 107

02:24:23 **Motion/Vote:** Sen. Fielder moved that **SB 107 DO PASS**. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SJ 4

02:25:47 **Motion:** Sen. MacDonald moved that **SJ 4 BE ADOPTED**.

Discussion:

02:26:41 Chairman Regier

02:27:01 Sen. Sands

02:28:04 Sen. Fielder

02:30:09 Chairman Regier

02:30:24 Sen. MacDonald

02:32:16 Sen. Swandal

02:32:58 **Vote:** Motion failed 5-6 by roll call vote with Sen. Fielder, Sen. Gross, Sen. MacDonald, Sen. Moe and Sen. Sands voting aye.

02:33:44 **Motion/Vote:** Sen. Fielder moved that **SJ 4 BE TABLED AND THE VOTE REVERSED**. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SJ 3

02:34:21 **Motion:** Sen. Fielder moved that **SJ 3 BE ADOPTED**.

Discussion:

02:34:42 Sen. Sales
02:35:09 Sen. MacDonald
02:35:43 Mark Murphy, Montana County Attorneys Association
02:37:17 Sen. Swandal
02:38:00 Sen. MacDonald

02:39:23 **Vote:** Motion carried unanimously by roll call vote.

02:40:13 Chairman Regier

EXECUTIVE ACTION ON SB 122

02:40:39 **Motion/Vote:** Sen. MacDonald moved that **SB 122 BE TABLED**. Motion carried unanimously by voice vote.

02:41:00 Sen. Vincent
02:41:13 Chairman Regier

ADJOURNMENT

Adjournment: 11:42 A.M.

Pam Schindler, Secretary

ps

Additional Documents

Additional Documents:

EXHIBIT([jus18aad.pdf](#))

Amendments to Senate Bill No. 63
1st Reading Copy

Requested by Senator Nels Swandal

For the Senate Judiciary Committee

Prepared by Julianne Burkhardt
January 18, 2017 (11:44am)

1. Page 3, line 1.

Strike: "9"

Insert: "12"

2. Page 3, line 15.

Following: "(8)(a)"

Strike: "If"

Insert: "Except as provided in subsection (8)(c), if"

3. Page 3, line 19.

Following: "(b)"

Strike: "If"

Insert: "Except as provided in subsection (8)(c), if"

4. Page 3, line 24.

Strike: "9"

Insert: "12"

5. Page 3, line 24.

Following: line 24

Insert: "(c) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the offender's conduct indicates that the offender will not be responsive to further efforts under the incentives and interventions grid, the judge may sentence the offender as provided in subsection (7)."

6. Page 4, line 7.

Strike: "or"

7. Page 4, line 8.

Following: "absconding"

Insert: "; or

(v) failure to enroll in or complete a required sex offender treatment program or a treatment program designed to treat violent offenders"

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 65th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Alan Doane, on February 16, 2017 at 8:00 AM, in Room 137
Capitol

ROLL CALL

Members Present:

Rep. Alan Doane, Chair (R)
Rep. Seth Berglee, Vice Chair (R)
Rep. Laurie Bishop (D)
Rep. Bob Brown (R)
Rep. Jennifer Eck (D)
Rep. Bill Harris (R)
Rep. Ellie Hill Smith (D)
Rep. Kathy Kelker (D)
Rep. Casey Knudsen (R)
Rep. Theresa Manzella (R)
Rep. Nate McConnell (D)
Rep. Shane A. Morigeau (D)
Rep. Dale Mortensen (R)
Rep. Zac Perry (D)
Rep. Lola Sheldon-Galloway (R)
Rep. Barry Usher (R)
Rep. Kirk Wagoner (R)

Members Excused:

Rep. Virginia Court, Vice Chair (D)
Rep. Matt Regier (R)

Members Absent: None

Staff Present: Sara Fleming, Committee Secretary
Helen Thigpen, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 59, 2/10/2017; SB 60, 2/14/2017; SB 63, 2/10/2017;
SB 64, 2/14/2017; SB 65, 2/10/2017; SB 67, 2/10/2017
Executive Action: HB 399, HJ 8

HEARING ON SB 59

Opening Statement by Sponsor:

00:01:20 Sen. Cynthia Wolken (D), SD 48, opened the hearing on SB 59, Generally revise criminal justice laws.

Proponents' Testimony:

00:07:57 Mark Pelka, Council State Government Justice Center (CSG)
[EXHIBIT\(juh34a01\)](#)

00:11:46 Rep. Brodehl
00:14:13 Sen. Osmundson
00:15:24 SK Rossi, American Civil Liberties Union (ACLU)
00:15:52 Brent Mead, Montana Policy Institute (MPI)
00:17:32 Joe Loos, Missoula Interfaith Collaborative

Opponents' Testimony: None

Informational Testimony:

00:19:28 Deb Matteucci, Montana Board of Crime Control
00:20:14 Adrian Slaughter, Department of Corrections (COR)
00:20:33 Peter Ohman, Office of the Public Defender (OPD)

Questions from Committee Members and Responses:

00:21:14 Rep. Kelker
00:21:48 Sen. Wolken
00:22:32 Rep. Manzella
00:22:59 Peter Ohman, OPD

Closing by Sponsor:

00:27:14 Sen. Wolken

HEARING ON SB 60

Opening Statement by Sponsor:

00:27:34 Sen. Cynthia Wolken (D), SD 48, opened the hearing on SB 60, Generally revise criminal justice laws.

Proponents' Testimony:

00:30:04 Mark Pelka, Council State Government Justice Center (CSG)
[EXHIBIT\(juh34a02\)](#)

00:31:53 Rep. Regier joined the meeting
00:36:00 Brent Mead, Montana Policy Institute (MPI)

Opponents' Testimony: None

Informational Testimony:

00:36:32 Adrian Slaughter, Department of Corrections (COR)

Questions from Committee Members and Responses:

00:36:50 Rep. McConnell
00:37:21 Sen. Wolken
00:39:04 Rep. Manzella
00:40:20 Mark Pelka, CSG
00:47:45 Rep. Sheldon-Galloway
00:48:49 Sen. Wolken
00:50:05 Rep. Manzella

Closing by Sponsor:

00:53:03 Sen. Wolken

HEARING ON SB 63**Opening Statement by Sponsor:**

00:53:45 Sen. Cynthia Wolken (D), SD 48, opened the hearing on SB 63, Revise laws related to supervision of offenders/defendants.

Proponents' Testimony:

00:56:52 Mark Pelka, Council State Government Justice Center (CSG)

[EXHIBIT\(juh34a03\)](#)

01:10:00 Brent Mead, Montana Policy Institute (MPI)
01:10:16 Matt Kuntz, National Alliance on Mental Illness Montana (NAMI Montana)
01:11:29 SK Rossi, American Civil Liberties Union (ACLU)
01:12:56 Adrian Slaughter, Department of Corrections (COR)
01:14:37 Mark Murphy, Montana County Attorneys Association (MCAA)
01:19:43 Peter Ohman, Office of the Public Defender (OPD)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

01:22:20 Rep. Kelker
01:23:09 Mark Pelka, CSG
01:24:08 Rep. Bishop
01:24:52 Mark Pelka, CSG
01:27:06 Rep. Harris
01:27:44 Mark Pelka, CSG
01:31:21 Rep. Usher
01:32:02 Adrian Slaughter, COR

Closing by Sponsor:

01:32:22 Sen. Wolken

01:32:47 Recess
01:46:48 Reconvene

01:46:52 Rep. Court joined the meeting

HEARING ON SB 64**Opening Statement by Sponsor:**

01:47:11 Sen. Cynthia Wolken (D), SD 48, opened the hearing on SB 64, Generally revise laws related to the board of pardons and parole.

Proponents' Testimony:

01:50:06 Mark Pelka, Council State Government Justice Center (CSG)
01:55:50 Adrian Slaughter, Department of Corrections (COR)
01:58:50 Brent Mead, Montana Policy Institute (MPI)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

01:59:48 Rep. Regier
01:59:58 Sen. Wolken
02:01:42 Rep. Court
02:02:37 Sen. Wolken
02:05:46 Rep. Sheldon-Galloway
02:12:46 Chair Doane
02:13:00 Rep. Court
02:13:46 Sen. Wolken
02:14:58 Rep. Wagoner
02:15:21 Adrian Slaughter, COR
02:16:05 Rep. Wagoner
02:16:26 Sen. Wolken
02:16:34 Rep. Usher
02:17:48 Sen. Wolken
02:21:27 Adrian Slaughter, COR
02:24:42 Rep. Harris
02:25:15 Sen Wolken
02:27:55 Adrian Slaughter, COR

Closing by Sponsor:

02:30:30 Sen. Wolken

HEARING ON SB 65**Opening Statement by Sponsor:**

02:31:18 Sen. Cynthia Wolken (D), SD 48, opened the hearing on SB 65, Generally revise laws regarding housing options for offenders.

Proponents' Testimony:

02:35:31 Abigail St. Lawrence, Montana Association of Christians (MAC)
02:37:07 Mark Murphy, Montana County Attorneys Association (MCAA)
02:40:30 Joe Loos, Missoula Interfaith Collaborative

EXHIBIT(juh34a04)

02:43:55 Mark Pelka, Council State Governor Justice Center (CSG)
[EXHIBIT\(juh34a05\)](#)

02:48:05 Brent Mead, Montana Policy Institute (MPI)
02:49:22 Stacey Anderson, Montana Primary Care Association

Opponents' Testimony: None

Informational Testimony:

02:50:31 Adrian Slaughter, Department of Corrections (COR)
02:50:45 Tina Chamberlain, Montana Board of Crime Control

Questions from Committee Members and Responses:

02:51:29 Rep. C. Knudsen
02:51:48 Sen. Wolken
02:53:35 Rep. Bishop
02:54:04 Tina Chamberlain, Montana Board of Crime Control
02:54:45 Rep. Bishop
02:55:03 Sen. Wolken
02:57:41 Rep. Kelker
02:58:27 Sen. Wolken
02:59:40 Rep. Harris
03:01:28 Mark Pelka, CSG
03:03:10 Rep. Sheldon-Galloway
03:05:37 Sen. Wolken
03:07:27 Chair Doane
03:08:26 Sen. Wolken
03:09:09 Rep. Usher
03:09:30 Sen. Wolken

Closing by Sponsor:

03:09:42 Sen. Wolken

HEARING ON SB 67

Opening Statement by Sponsor:

03:10:55 Sen. Cynthia Wolken (D), SD 48, opened the hearing on SB 67, Generally revise offender intervention program laws.

Proponents' Testimony:

03:13:45 Mark Pelka, Council State Governor Justice Center (CSG)
[EXHIBIT\(juh34a06\)](#)

03:16:08 Brent Mead, Montana Policy Institute (MPI)

Opponents' Testimony: None

Informational Testimony:

03:16:41 Adrian Slaughter, Department of Corrections
03:16:48 Tina Chamberlain, Montana Board of Crime Control

Questions from Committee Members and Responses: None

Closing by Sponsor:

03:17:31 Sen. Wolken

03:18:04 Recess

03:26:22 Reconvene

EXECUTIVE ACTION ON HJ 8

Discussion:

03:26:49 Helen Thigpen, Legislative Services Division (LSD)

03:27:14 **Motion/Vote:** Rep. Berglee moved that **HJ 8 BE TABLED**. Motion carried 18-1 by voice vote with Rep. Wagoner voting no.

EXECUTIVE ACTION ON HB 399

03:27:50 **Motion:** Rep. Berglee moved that **HB 399 DO PASS**.

Discussion:

03:28:01 Helen Thigpen, LSD

03:28:05 Rep. Hill Smith

03:28:12 Rep. Eck

03:28:52 **Vote:** Motion failed unanimously by voice vote.

03:29:27 **Motion:** Rep. Court moved that **HB 399 BE TABLED**. Motion was without objection.

ADJOURNMENT

Adjournment:

Sara Fleming, Secretary

sf

Additional Documents:

EXHIBIT([juh34aad.pdf](#))

Senate Bill 63 – Generally revise laws related to supervision of offenders/defendants

Justice Reinvestment in Montana

Senate Bill 63 is part of a package of bills supported by the Montana Commission on Sentencing that together avert growth in prison and supervision populations, increase public safety, reduce recidivism, and provide tools to counties to ease pressures on jail populations. The policy framework in these bills is estimated to avert forecasted growth in Montana's prison population and avert \$69 million in future costs.

Senate Bill 63 reduces recidivism and increases public safety by:

- Prioritizing probation resources for people who are most likely to reoffend by requiring probation and parole officers to notify the court to request that a person on supervision who has complied with the conditions of his or her supervision be conditionally discharged at 9 months for low-risk people, 18 months for moderate-risk people, and 24 months for high-risk people.

The bill, in conjunction with Senate Bill 64, averts prison population growth and \$15.7 million in future costs in FY2018-2019 by:

- Allowing Department of Corrections (DOC) hearings officers to impose up to 30-day sanctions, or up to 90-day sanctions with department approval, for probation compliance violations without resorting to a petition to the court.
- Limiting imprisonment for probation compliance violations to nine months once the appropriate violation responses under DOC's incentives and interventions grid have been exhausted.

Rationale

Conditional Discharge

Probation sentences in Montana are lengthy.¹ Among the people whose probation terms ended successfully in FY2015, more than 60 percent had served more than three years on supervision, and 30 percent had served more than five years.²

This bill prioritizes probation resources for people who are most likely to reoffend by requiring probation and parole officers to notify the court to request that a person on supervision who has complied with the conditions of his or her supervision be conditionally discharged. This notification will occur according to a schedule based on the assessed risk and needs of each individual: after a person assessed as being at a low risk of reoffending has served 9 months, a moderate-risk person has served 18 months, and a high-risk person has served 24 months. The notification will be provided to the victim, if any, the county attorney, the probationer, and defense counsel. Unless there is an objection and a request for a hearing from the county attorney on behalf of the victim, or the court requires a hearing, the person will be conditionally discharged 30 days after the notification.

¹ CSG Justice Center analysis of Montana Department of Corrections admissions & offense history data, FY2012; A person's likelihood of recidivating diminishes significantly over time. In Montana, among a cohort of people who started their probation terms in FY2012 and were resentenced within three years, 47 percent were resentenced in the first year, and 80 percent were resentenced within two years.

² CSG Justice Center analysis of DOC releases data, FY2015.

Senate Bill 63 continued

People who are conditionally discharged are no longer on supervision, but can be placed back onto supervision for the duration of the rest of original probation sentence. By allowing for the discharge of compliant low- and medium-risk people from probation within a relatively short period of time, this bill enables probation and parole officers to focus resources on people during the first two years of supervision—the time when recidivism is most likely. Determining the length of supervision terms based on risk level enables probation and parole officers to prioritize their time for people at the highest risk of reoffending.

Compliance Violations

Probationers who are revoked to prison for violating conditions of their supervision spend an average of 23 months in prison prior to being released.³

This bill also allows DOC hearings officers to impose up to 30-day sanctions, or up to 90-day sanctions with department approval, for probation compliance violations without resorting to a petition to the court. This bill limits imprisonment for compliance violations to nine months once the appropriate violation responses under DOC's incentives and interventions grid have been exhausted. This bill also allows these people to be sanctioned in jails and alternative facilities, funded by the state, in lieu of prison.

Compliance violations, which do not involve a new crime, are violations of imposed conditions of supervision and can include missing a supervision appointment, failing to get a job, or violating a curfew, among others. Limiting the term of incarceration for people who violate conditions of their supervision but were not charged with new crimes can ensure more appropriate and effective consequences for these people. Responses that are proportional to the seriousness of the violations can improve the supervisee's perception that responses are fair and objective, which can in turn deter future unwanted behaviors.⁴

³ CSG Justice Center analysis of DOC releases data, FY2015.

⁴ Faye Taxman, David Soule, and Adam Gelb, "Graduated Sanctions: Stepping into Accountable Systems and Offenders," *Prison Journal*, 1999, 79(2): 182–205.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 65th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Alan Doane, on March 10, 2017 at 8:00 AM, in Room 137 Capitol

ROLL CALL

Members Present:

Rep. Alan Doane, Chair (R)
Rep. Seth Berglee, Vice Chair (R)
Rep. Virginia Court, Vice Chair (D)
Rep. Laurie Bishop (D)
Rep. Bob Brown (R)
Rep. Jennifer Eck (D)
Rep. Bill Harris (R)
Rep. Ellie Hill Smith (D)
Rep. Kathy Kelker (D)
Rep. Theresa Manzella (R)
Rep. Nate McConnell (D)
Rep. Shane A. Morigeau (D)
Rep. Dale Mortensen (R)
Rep. Zac Perry (D)
Rep. Matt Regier (R)
Rep. Lola Sheldon-Galloway (R)
Rep. Barry Usher (R)
Rep. Kirk Wagoner (R)

Members Excused:

Rep. Casey Knudsen (R)

Members Absent: None

Staff Present: Sara Fleming, Committee Secretary
Helen Thigpen, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 28, 3/7/2017; SJ 3, 3/7/2017
Executive Action: SB 59, SB 60, SB 63, SB 64, SB 65, SB 67, SJ 3, SJ 11

HEARING ON SJ 3**Opening Statement by Sponsor:**

00:01:27 Sen. Cynthia Wolken (D), SD 48, opened the hearing on SJ 3, Interim study of tribal resources for mbrs involved in criminal justice system.

Proponents' Testimony:

00:02:51 Kevin Olson, Montana Department of Corrections (COR)
00:03:26 SK Rossi, American Civil Liberties Union (ACLU)
00:04:21 Hillary Ann Crosby, Montana Coalition Against Domestic and Sexual Violence (MCADSV)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

00:05:00 Rep. Sheldon-Galloway
00:05:34 Kevin Olson (COR)
00:05:54 Rep. Harris
00:06:26 Kevin Olson (COR)

Closing by Sponsor:

00:07:05 Sen. Wolken

HEARING ON SB 28**Opening Statement by Sponsor:**

00:07:40 Sen. Chas Vincent (R), SD 1, opened the hearing on SB 28, Allow Water Court review of certain DNRC decisions.

EXHIBIT(juh50a01)

Proponents' Testimony:

00:12:32 Abigail St. Lawrence, Montana Association of Realtors (MAR), Bloomquist Law Firm
00:18:17 Bina Peters, Self
00:19:55 Mike Murphy, Montana Water Resources Association (MWRA)
00:22:09 Chelcie Cargill, Montana Farm Bureau Federation (MFBF)
00:23:49 Lorents Grosfield, Self
00:26:04 Kevin Germain, Self
00:26:56 Colleen Coyle, Self
00:27:28 Levi Ostberg, Montana Farmers Union (MFU)

Opponents' Testimony:

00:28:20 John Tubbs, Montana Department of Natural Resources and Conservation (DNRC)
00:36:06 Krista Lee Evans Association of Gallatin Agricultural Irrigators (AGAI)
00:41:10 Kori Anderson, Montana Stock Growers Association (MSGA), Montana Cattlemen
00:41:56 Brian Ohs, Montana Trout Unlimited (MTU)

Informational Testimony: None

Questions from Committee Members and Responses:

00:43:35 Rep. Court
00:44:00 Abigail St. Lawrence, MAR, Bloomquist Law Firm
00:52:13 Rep. McConnell
00:53:33 Krista Lee Evans, AGAI
00:56:00 Rep. McConnell
00:56:27 Krista Lee Evans, AGAI
00:58:12 Rep. Hill Smith left the meeting
00:58:53 Rep. McConnell
00:59:25 Sen. Vincent
01:02:56 Rep. Regier
01:03:22 Krista Lee Evans, AGAI
01:03:55 Rep. Harris
01:04:53 Abigail St. Lawrence, MAR, Bloomquist Law Firm
01:11:19 Rep. Manzella
01:12:50 Krista Lee Evans, AGAI
01:14:29 Chair Doane
01:15:31 Rep. Usher
01:16:26 Bina Peters, Self
01:18:35 Rep. Kelker
01:19:21 John Tubbs, DNRC
01:23:46 Rep. Wagoner

Closing by Sponsor:

01:24:31 Sen. Vincent

01:34:10 Recess
02:02:11 Reconvene

EXECUTIVE ACTION ON SB 59

Discussion:

02:02:23 Helen Thigpen, Legislative Services Division (LSD)

02:02:55 **Motion:** Rep. Berglee moved that **SB 59 BE CONCURRED IN.**

Discussion:

02:03:20 Helen Thigpen, LSD

02:05:31 **Motion:** Rep. Berglee moved that **SB 59 BE AMENDED.**

[EXHIBIT\(juh50a02\)](#)

Discussion:

02:06:02 Sen. Wolken
02:06:40 Rep. Manzella
02:07:30 Sen. Wolken
02:08:35 Rep. Wagoner
02:08:57 Sen. Wolken

02:09:08 Rep. Usher

02:09:16 **Vote:** Motion carried unanimously by voice vote. Rep. Eck, Rep. Hill Smith and Rep. C. Knudsen voted by proxy.

02:09:48 **Motion/Vote:** Rep. Berglee moved that **SB 59 BE CONCURRED IN AS AMENDED**. Motion carried unanimously by voice vote. Rep. Eck, Rep. Hill Smith and Rep. C. Knudsen voted by proxy. Rep. Kelker will carry the bill.

EXECUTIVE ACTION ON SB 60

Discussion:

02:10:59 Helen Thigpen, LSD

02:11:50 Chair Doane

02:11:56 **Motion:** Rep. Berglee moved that **SB 60 BE CONCURRED IN**.

Discussion:

02:12:05 Rep. McConnell

02:12:36 **Vote:** Motion carried unanimously by voice vote. Rep. Eck, Rep. Hill Smith and Rep. C. Knudsen voted by proxy. Rep. McConnell will carry the bill.

EXECUTIVE ACTION ON SB 63

Discussion:

02:13:22 Helen Thigpen, LSD

02:14:07 **Motion:** Rep. Berglee moved that **SB 63 BE CONCURRED IN**.

Discussion:

02:14:18 Rep. McConnell

02:14:48 **Vote:** Motion carried unanimously by voice vote. Rep. Eck, Rep. Hill Smith and Rep. C. Knudsen voted by proxy. Rep. McConnell will carry the bill.

EXECUTIVE ACTION ON SB 64

Discussion:

02:15:26 Helen Thigpen, LSD

02:16:03 **Motion:** Rep. Berglee moved that **SB 64 BE CONCURRED IN**.

Discussion:

02:16:17 Rep. Sheldon-Galloway

02:18:15 Rep. Court

02:18:34 Chair Doane

02:18:46 Rep. Usher

02:18:57 Sen. Wolken

02:20:04 Chair Doane

02:20:53 **Substitute Motion/Vote:** Rep. M. Regier moved that **SB 64 BE TABLED**. Motion carried 10-9 by roll call vote with Rep. Bishop, Rep. Court, Rep. Eck, Rep. Hill Smith, Rep. Kelker, Rep. McConnell, Rep. Morigeau, Rep. Perry and Rep. Wagoner voting no. Rep. Eck, Rep. Hill Smith and Rep. C. Knudsen voted by proxy.

EXECUTIVE ACTION ON HB 65

Discussion:

02:22:31 Helen Thigpen, LSD

02:23:19 **Motion:** Rep. Berglee moved that **SB 65 BE CONCURRED IN**.

02:23:48 **Motion:** Rep. Usher moved that **SB 65 BE AMENDED**.

[EXHIBIT\(juh50a03\)](#)

Discussion:

02:24:06 Helen Thigpen, LSD

02:24:37 Rep. Usher

02:24:58 Chair Doane

02:25:13 Rep. Kelker

02:26:20 Chair Doane

02:27:04 Rep. Court

02:27:50 Rep. Harris

02:28:46 **Vote:** Motion carried 12-7 by roll call vote with Rep. Berglee, Rep. B. Brown, Rep. Doane, Rep. C. Knudsen, Rep. Manzella, Rep. M. Regier and Rep. Sheldon-Galloway voting no. Rep. Eck, Rep. Hill Smith and Rep. C. Knudsen voted by proxy.

02:29:57 **Motion:** Rep. Berglee moved that **SB 65 BE CONCURRED IN AS AMENDED**.

Discussion:

02:30:09 Rep. Court

02:30:59 Rep. Berglee

02:32:01 Rep. Sheldon-Galloway

02:35:04 Rep. Morigeau

02:36:27 Rep. McConnell

02:36:51 Rep. Bishop

02:37:31 **Vote:** Motion carried 17-2 by roll call vote with Rep. Doane and Rep. Sheldon-Galloway voting no. Rep. Eck, Rep. Hill Smith and Rep. C. Knudsen voted by proxy. Rep. Usher will carry the bill.

EXECUTIVE ACTION ON SB 67

Discussion:

02:39:23 Helen Thigpen, LSD

02:39:52 **Motion/Vote:** Rep. Berglee moved that **SB 67 BE CONCURRED IN**. Motion carried unanimously by voice vote. Rep. Eck, Rep. Hill Smith and Rep. C. Knudsen voted by proxy. Rep. Wagoner will carry the bill.

EXECUTIVE ACTION ON SJ 3

02:41:06 **Motion:** Rep. Berglee moved that **SJ 3 BE CONCURRED IN**.

Discussion:

02:41:24 Chair Doane

02:41:43 **Vote:** Motion carried 16-3 by roll call vote with Rep. Manzella, Rep. M. Regier and Rep. Sheldon-Galloway voting no. Rep. Eck, Rep. Hill Smith and Rep. C. Knudsen voted by proxy. Rep. Doane will carry the bill.

EXECUTIVE ACTION ON SJ 11

Discussion:

02:43:11 Helen Thigpen, LSD

02:43:29 **Motion:** Rep. Berglee moved that **SJ 11 BE CONCURRED IN**.

Discussion:

02:43:45 Rep. McConnell
02:44:19 Rep. Morigeau
02:46:09 Chair Doane
02:46:49 Rep. Kelker
02:49:07 Rep. Usher
02:50:48 Rep. Harris
02:52:09 Rep. Berglee
02:55:23 Rep. McConnell
02:57:24 Rep. Morigeau
02:59:34 Chair Doane
03:00:28 Rep. Berglee
03:01:04 Rep. Morigeau
03:01:31 Chair Doane

03:01:50 **Vote:** Motion carried 11-8 by roll call vote with Rep. Bishop, Rep. Court, Rep. Eck, Rep. Hill Smith, Rep. Kelker, Rep. McConnell, Rep. Morigeau and Rep. Perry voting no. Rep. Eck, Rep. Hill Smith and Rep. C. Knudsen voted by proxy. Rep. Regier will carry the bill.

Committee Business:

03:03:45 Rep. Morigeau
03:03:56 Chair Doane

EXECUTIVE ACTION ON SB 305

03:04:14 **Motion:** Rep. McConnell moved that **SB 305 BE SCHEDULED FOR HEARING ON MARCH 23RD.**

Discussion:

03:04:46 Chair Doane
03:05:45 Helen Thigpen, LSD
03:05:50 Rep. McConnell
03:05:56 Chair Doane
03:06:03 Rep. McConnell
03:06:23 Chair Doane
03:06:35 Rep. Usher
03:07:40 Chair Doane

03:08:18 Rep. McConnell **WITHDREW THE MOTION.**

Discussion:

03:08:34 Chair Doane

ADJOURNMENT

Adjournment: 03:09:04

Sara Fleming, Secretary

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Additional Documents:

EXHIBIT([juh50aad.pdf](#))

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 65th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: Chair Mark Noland, on March 21, 2017 at 8:30 A.M., in Room 172 Capitol

ROLL CALL

Members Present:

Rep. Mark Noland, Chair (R)
Rep. Amanda Curtis, Vice Chair (D)
Rep. Vince Ricci, Vice Chair (R)
Rep. Fred Anderson (R)
Rep. Ross H. Fitzgerald (R)
Rep. Bruce Grubbs (R)
Rep. Steve Gunderson (R)
Rep. Denley M. Loge (R)
Rep. Andrea Olsen (D)
Rep. Adam Rosendale (R)
Rep. Sharon Stewart-Peregoy (D)
Rep. Jeremy Trebas (R)
Rep. Sue Vinton (R)
Rep. Daniel Zolnikov (R)

Members Excused: Rep. Willis Curdy (D)
Rep. Moffie Funk (D)
Rep. Gordon Pierson Jr (D)
Rep. Casey Schreiner (D)
Rep. Jonathan Windy Boy (D)

Members Absent: None

Staff Present: Karen Armstrong, Committee Secretary
Pat Murdo, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 116, 3/21/2017; SB 212, 3/13/2017; SB 312, 3/21/2017;
SJ 13, 2/27/2017, SB 243, 3/13/2017
Executive Action: None

HEARING ON SB 116**Opening Statement by Sponsor:**

00:02:46 Sen. Mark Blasdel (R), SD 4, opened the hearing on SB 116, Disallowing workers' compensation benefits for certain false statements.

00:03:52 Rep. Curdy joined the meeting.

Proponents' Testimony:

00:04:45 Brad Roy, Kalispell Regional Healthcare

00:08:41 Terry Kramer, Kramer Enterprises

00:11:37 Chair Noland left the meeting and Vice Chair Ricci assumed the chair.

00:11:47 Larry Jones, Montana Self Insurers' Association

00:13:30 Aidan Myhre, Kalispell Chamber of Commerce

00:14:03 Rep Noland joined the meeting and resumed the chair.

00:15:36 Julia Altemus, Montana Wood Products Association

00:16:40 Mark Baker, Montana Chamber of Commerce (MCC)

00:17:58 Brian Thompson, Montana Contractors' Association

Opponents' Testimony:

00:18:48 Al Smith, Montana Trial Lawyers Association (MTLA)

[EXHIBIT\(buh58a01\)](#)

00:27:18 Eric Strauss, Department of Labor and Industry (DLI)

00:29:18 Sen. Jill Cohenour

Informational Testimony:

00:31:20 Kevin Braun, Montana State Fund (MSF)

Questions from Committee Members and Responses:

00:31:47 Chair Noland

00:32:49 Brad Roy, Kalispell Regional Healthcare

00:33:53 Chair Noland

00:34:42 Larry Jones, Montana Self Insurers' Association

00:37:03 Rep. Olsen

00:37:41 Brad Roy, Kalispell Regional Healthcare

00:38:35 Rep. Olsen

00:39:14 Brad Roy, Kalispell Regional Healthcare

00:39:50 Rep. Olsen

00:40:18 Kelly Stimpson, Kalispell Regional Healthcare

00:41:27 Rep. Curtis

00:41:47 Eric Strauss, DLI

00:42:34 Rep. Vinton

00:44:21 Eric Strauss, DLI

00:44:49 Chair Noland

00:45:05 Kevin Braun, MSF

00:45:54 Rep. Curdy

00:46:46 Al Smith, MTLA

00:47:30 Rep. Ricci

00:48:19 Brad Roy, Kalispell Regional Healthcare

00:48:28 Rep. Stewart-Peregoy

00:48:53 Kevin Braun, MSF

Closing by Sponsor:

00:49:36 Sen. Blasdel

HEARING ON SB 212

Opening Statement by Sponsor:

00:52:07 Sen. Jill Cohenour (D), SD 42, opened the hearing on SB 212, Revise mature defensive driving laws.

Proponents' Testimony:

00:54:54 Del Lonnquist, American Association of Retired Persons, Montana (AARP)

[EXHIBIT\(buh58a02\)](#)

Opponents' Testimony:

01:01:24 Bruce Spencer, All State Insurance, American Insurance Association, Farmers Insurance Group

[EXHIBIT\(buh58a03\)](#)

01:04:05 Aimee Grmoljez, Property Casualty Insurance of America (PCIA)

[EXHIBIT\(buh58a04\)](#)

[EXHIBIT\(buh58a05\)](#)

[EXHIBIT\(buh58a06\)](#)

01:07:49 Roger McGlenn, Independent Insurance Agents Association of Montana

01:09:44 Bob Biskupiak, State Auditors Office (SAO)

01:10:00 Rep. Funk joined the meeting.

Informational Testimony: None

Questions from Committee Members and Responses:

01:10:58 Rep. Ricci

01:12:54 Bruce Spencer, Allstate Insurance, American Insurance Association, Farmers Insurance Group

01:13:06 Rep. Olsen

01:14:08 Bruce Spencer, Allstate Insurance, American Insurance Association, Farmers Insurance Group

Closing by Sponsor:

01:15:36 Sen. Cohenour

HEARING ON SB 243

Opening Statement by Sponsor:

01:20:34 Sen. Pat Connell (R), SD 43, opened the hearing on SB 243, Revise Montana mortgage act to create an exemption for certain loan originators.

Proponents' Testimony:

01:26:55 Greg Van Horssen, State Farm Insurance Company

EXHIBIT(buh58a07)

01:28:51 Chair Noland left the meeting and Vice Chair Ricci assumed the chair.

01:33:53 Chair Ricci

01:33:56 Roger Bainbridge, State Farm Bank

01:36:05 Rep. Noland joined the meeting and resumed the chair.

01:40:09 Scott Reichner, State Farm Insurance Company

01:44:08 T. J. Wendt, State Farm Insurance Company

01:47:30 Joe Mitchell, State Farm Insurance Company

01:50:23 Mike Miller, State Farm Insurance Company

01:52:43 David Jensen, State Farm Insurance Company

Opponents' Testimony:

01:55:51 Melanie Hall, Department of Administration (DOA)

EXHIBIT(buh58a08)

02:03:50 Rich Bruner, Montana Bankers Association (MBA)

02:06:39 Pete Johnson, Opportunity Bank of Montana

02:09:02 Edward Black, Vocal Credit Union

EXHIBIT(buh58a09)

02:09:27 Rep. Pierson joined the meeting.

02:10:40 Mike Richter, First Community Bank

02:12:25 Kenneth Martin, Citizens Alliance Bank

02:14:22 Jack Lawson, Missoula Federal Credit Union

02:17:10 Amy Quarles, First Security Bank of Helena

02:18:45 Ben Ruddy, Dutton State Bank

02:21:03 Jim Brown, Montana Independent Bankers Association (MIBA)

02:23:05 Chair Noland left the meeting and Vice Chair Ricci assumed the chair.

02:24:09 Carin McClain, Montana's Credit Unions (MCU)

02:25:16 Aimee Grmoljez, Montana Bankers Association (MBA)

Informational Testimony: None**Questions from Committee Members and Responses:**

02:27:12 Rep. Curtis

02:27:41 Joe Mitchell, State Farm Insurance Company

02:28:08 Rep. Vinton

02:29:10 Melanie Hall, DOA

02:29:20 Rep. Trebas

02:31:35 Jim Brown, MBA

02:33:12 Melanie Hall, DOA

02:35:01 Rep. Trebas

02:35:13 Melanie Hall, DOA

02:36:03 Rep. Grubbs

02:37:04 Melanie Hall, DOA

02:39:33 Rep. Olsen

02:39:56 Melanie Hall, DOA

02:41:11 Rep. Rosendale
02:41:38 Greg Van Horssen
02:42:41 Rep. Rosendale
02:43:24 Sen. Connell
02:46:03 Chair Ricci
02:47:01 Melanie Hall, DOA

Closing by Sponsor:

02:47:24 Sen. Connell

HEARING ON SB 312

Opening Statement by Sponsor:

02:56:05 Sen. Jeffrey Welborn (R), SD 36, opened the hearing on SB 312, Revise laws relating to prescription drug use.

Proponents' Testimony:

02:59:04 Lance Zanto, Labor and Management Advisory Council (LMAC)
02:59:56 Al Smith, Montana Trial Lawyers Association (MTLA) and LMAC
03:01:50 Eric Strauss, Department of Labor and Industry (DLI)
03:02:17 Kevin Braun, Montana State Fund (MSF)

Opponents' Testimony: None

Informational Testimony:

03:03:34 Bruce Spencer, National Council of Compensation Insurance (NCCI)

Questions from Committee Members and Responses:

03:04:52 Rep. Gunderson
03:05:33 Al Smith, MTLA and LMAC
03:05:52 Rep. Olsen
03:07:00 Al Smith, MTLA and LMAC
03:07:18 Rep. Vinton
03:07:55 Eric Strauss, DLI

Closing by Sponsor:

03:08:28 Sen. Welborn

HEARING ON SJ 13

Opening Statement by Sponsor:

03:09:20 Sen. Tom Facey (D), SD 50, opened the hearing on SJ 13, Joint resolution urging Congress to address air ambulance balance billing issues.

Proponents' Testimony:

03:11:02 Al Smith, Montana Trial Lawyers Association (MTLA)
03:11:40 Bruce Spencer, Americas Health Insurance Plans
03:12:15 Jennifer Hensley, Pacific Source Health Plans
03:13:11 Brian Thompson, Montana Contractors' Association

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

03:14:14	Rep. Curdy
03:14:32	Sen. Facey
03:14:54	Rep. Gunderson
03:15:28	Sen. Facey
03:15:36	Rep. Trebas
03:16:41	Sen. Facey

Closing by Sponsor:

03:17:17	Sen. Facey
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03:18:16	Chair Ricci
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ADJOURNMENT

Adjournment: 03:18:36

Karen Armstrong, Secretary

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Additional Documents:

EXHIBIT([buh58aad.pdf](#))

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 65th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: Chair Nancy Ballance, on March 21, 2017 at 3:00 P.M., in Room 102 Capitol

ROLL CALL

Members Present:

Rep. Randy Brodehl, Vice Chair (R)
Rep. Kelly McCarthy, Vice Chair (D)
Rep. Dan Bartel (R)
Rep. Tom Burnett (R)
Rep. Rob Cook (R)
Rep. Mike Cuffe (R)
Rep. Janet Ellis (D)
Rep. Carl Glimm (R)
Rep. Bradley Hamlett (D)
Rep. Kenneth L. Holmlund (R)
Rep. Donald W. Jones (R)
Rep. Jon A. Knokey (R)
Rep. Jimmy Patelis (R)
Rep. Marilyn Ryan (D)
Rep. Brad Tschida (R)

Members Excused:

Rep. Nancy Ballance, Chair (R)
Rep. Kimberly Dudik (D)
Rep. Mike Hopkins (R)
Rep. Jim Keane (D)
Rep. Ryan Lynch (D)
Rep. Rae Peppers (D)
Rep. Tom Woods (D)

Members Absent: None

Staff Present: Julie Johnson, Legislative Branch
Joe Triem, Legislative Branch
Sherri Row, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: HB 390, 3/15/2017; SB 60, 3/15/2017; SB 63, 3/15/2017

00:01:00 Vice Chair Brodehl assumed the Chair

HEARING ON HB 390

Opening Statement by Sponsor:

00:01:48 Rep. Donald Jones (R), HD 46, opened the hearing on HB 390, Generally revise school funding laws.

00:02:21 Rep. Lynch joined the meeting

Proponents' Testimony:

00:02:48 Siri Smillie, Governor's Office (GOV)
00:05:42 Geoff Feiss, Montana Telecommunications Association
00:07:41 Dennis Parman, Montana Rural Education Association (MREA)
00:08:55 Bob Vogel, Montana School Board Association (MTSBA)
00:09:55 Kirk Miller, School Administrators of Montana
00:11:21 Rep. Dudik joined the meeting
00:11:51 Eric Feaver, MEA-MFT
00:12:04 John Bemis, Century Link

Opponents' Testimony: None

Informational Testimony:

00:13:46 Paul Taylor, Office of Public Instruction (OPI)

Questions from Committee Members and Responses:

00:14:04 Rep. Burnett
00:14:29 Dennis Parman, MREA
00:15:01 Jeff Feiss, Montana Telecommunications Association
00:15:41 Rep. Burnett
00:17:45 Jeff Feiss, Montana Telecommunications Association
00:17:53 Chair Brodehl
00:18:03 Jeff Feiss, Montana Telecommunications Association

Closing by Sponsor:

00:18:50 Rep. Jones

HEARING ON SB 60

Opening Statement by Sponsor:

00:19:49 Sen. Cynthia Wolken (D), SD 48, opened the hearing on SB 60, Generally revise criminal justice laws.

Proponents' Testimony:

00:21:47 Eric Bryson, Montana Association of Counties (MACo)

Opponents' Testimony: None

Informational Testimony:

00:25:53 Pat Schlauch, Department of Corrections (COR)

Questions from Committee Members and Responses:

00:26:15 Rep. Patelis
00:27:21 Eric Bryson, MACo
00:27:52 Rep. Patelis
00:30:59 Kevin Olson, Department of Corrections (COR)
00:32:00 Rep. Patelis
00:32:29 Rep. Tschida
00:34:42 Sen. Wolken
00:35:45 Rep. Tschida
00:36:08 Rep. Patelis
00:36:45 Pat Schlauch, COR
00:38:01 Rep. Lynch
00:39:00 Chair Brodehl
00:39:23 Eric Bryson, MACo
00:40:18 Rep. Hopkins joined the meeting
00:40:52 Chair Brodehl
00:40:57 Eric Bryson, MACo
00:41:01 Chair Brodehl
00:41:06 Eric Bryson, MACo
00:41:20 Chair Brodehl
00:41:30 Eric Bryson, MACo
00:42:49 Chair Brodehl

Closing by Sponsor:

00:42:59 Sen. Wolken

HEARING ON SB 63**Opening Statement by Sponsor:**

00:44:06 Sen. Cynthia Wolken (D), SD 48, opened the hearing on SB 63, Revise laws related to supervision of offenders/defendants.

Proponents' Testimony:

00:44:59 Eric Bryson, MACo
00:46:47 Pat Schlauch, COR

Opponents' Testimony: None**Informational Testimony:**

00:49:26 Peter Ohman, Public Defender's Office
00:50:53 Rep. Knokey left the meeting

Questions from Committee Members and Responses:

00:51:56 Rep. Patelis
00:53:30 Chair Brodehl
00:53:50 Kevin Olson, COR
00:54:21 Chair Brodehl

00:57:52 Peter Ohman, Public Defender's Office

00:58:36 Chair Brodehl

00:58:53 Sen. Wolken

Closing by Sponsor:

00:59:21 Sen. Wolken

01:00:29 Joe Triem, Legislative Fiscal Division (LFD)

01:01:13 Rep. Cuffe

ADJOURNMENT

Adjournment: 01:01:35

Sherri Row, Secretary

sr

Additional Documents:

EXHIBIT([aph58bad.pdf](#))

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 65th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: Chair Nancy Ballance, on April 3, 2017 at 3:00 P.M., in Room 102 Capitol

ROLL CALL

Members Present:

Rep. Nancy Ballance, Chair (R)
Rep. Randy Brodehl, Vice Chair (R)
Rep. Kelly McCarthy, Vice Chair (D)
Rep. Dan Bartel (R)
Rep. Rob Cook (R)
Rep. Mike Cuffe (R)
Rep. Kimberly Dudik (D)
Rep. Janet Ellis (D)
Rep. Carl Glimm (R)
Rep. Bradley Hamlett (D)
Rep. Kenneth L. Holmlund (R)
Rep. Mike Hopkins (R)
Rep. Donald W. Jones (R)
Rep. Jim Keane (D)
Rep. Jon A. Knokey (R)
Rep. Ryan Lynch (D)
Rep. Jimmy Patelis (R)
Rep. Rae Peppers (D)
Rep. Marilyn Ryan (D)
Rep. Brad Tschida (R)

Members Excused:

Rep. Tom Burnett (R)
Rep. Tom Woods (D)

Members Absent: None

Staff Present: Julie Johnson, Legislative Branch
Joe Triem, Legislative Branch
Sherri Row, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 57, 3/31/2017; SB 64, 3/31/2017; SB 139, 3/31/2017; SB 341, 3/31/2017
Executive Action: SB 60; SB 63; SB 64; SB 139; SB 260; SB 341

00:01:16 Chair Ballance

HEARING ON SB 57

Opening Statement by Sponsor:

00:01:28 Sen. Mark Blasdel (R), SD 4, opened the hearing on SB 57, Clarify highway patrol funding sources and increase certain registration fees.

Proponents' Testimony:

00:03:36 Rep. Garner

00:05:06 Colonel Tom Butler, Montana Highway Patrol (MHP)

[EXHIBIT\(aph69a01\)](#)

[EXHIBIT\(aph69a02\)](#)

00:09:39 Mark Taylor, Association of Montana Troopers

[EXHIBIT\(aph69a03\)](#)

00:11:15 Aimee Grmoljez, Property Casualty Insurance

00:11:43 Quint Nyman, Montana Public Employess Association (MPEA)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

00:12:38 Rep. Keane

00:12:58 Sen. Blasdel

00:13:20 Rep. Knokey

00:13:43 Sen. Blasdel

00:14:30 Colonel Butler, MHP

00:15:00 Rep. Knokey

00:15:55 Colonel Butler, MHP

00:16:18 Rep. Hamlett

00:17:00 Sen. Blasdel

00:17:20 Colonel Butler, MHP

00:18:08 Rep. Hamlett

00:18:52 Colonel Butler, MHP

00:19:33 Vice Chair Brodehl

00:20:41 Colonel Butler, MHP

00:21:03 Rep. Patelis

00:21:46 Colonel Butler, MHP

00:21:56 Rep. Keane

00:22:09 Colonel Butler, MHP

00:22:25 Natalia Bowser, Montana Highway Patrol (MHP)

Closing by Sponsor:

00:23:20 Sen. Blasdel

HEARING ON SB 64

Opening Statement by Sponsor:

00:23:53 Sen. Cynthia Wolken (D), SD 48, opened the hearing on SB 64, Generally revise laws related to the board of pardons and parole.

Proponents' Testimony:

00:25:25 Pat Schlauch, Department of Correction (COR)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

00:27:16 Vice Chair Brodehl
00:29:42 Pat Schlauch, COR
00:30:18 Rep. Lynch
00:33:30 Sen. Wolken
00:34:14 Rep. Dudik
00:34:39 Sen. Wolken
00:34:56 Rep. Dudik
00:37:19 Adrienne Cotton, Department of Corrections (COR)
00:37:41 Rep. Patelis
00:39:14 Adrienne Cotton, COR

Closing by Sponsor:

00:39:48 Sen. Wolken

HEARING ON SB 139

Opening Statement by Sponsor:

00:40:13 Sen. Duane Ankney (R), SD 20, opened the hearing on SB 139, Revise k-12 school district expansion laws.

00:41:02 Rep. Vinton, HD 56

Proponents' Testimony:

00:42:00 Ron Whitmoyer, East Helena School District

[EXHIBIT\(aph69a04\)](#)

00:47:54 Jim Standaert, East Helena School District

[EXHIBIT\(aph69a05\)](#)

00:57:13 Dennis Parman, Montana Rural Education Association

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

01:00:45 Rep. Ellis
01:04:12 Jim Standaert, East Helena School District

Closing by Sponsor:

01:04:56 Rep. Vinton

HEARING ON SB 341**Opening Statement by Sponsor:**

01:05:55 Sen. Albert Olszewski (R), SD 6, opened the hearing on SB 341, Establish contract requirements for the WWAMI program.

Proponents' Testimony:

01:06:41 Dick Brown, Montana Hospital Association
01:08:37 Jean Branscum, Montana Medical Association

Opponents' Testimony: None**Informational Testimony:** None**Questions from Committee Members and Responses:**

01:10:57 Vice Chair McCarthy
01:13:25 Sen. Olszewski
01:13:31 Rep. Jones
01:14:29 Sen. Olszewski
01:14:58 Vice Chair Brodehl
01:16:24 Sen Olszewski
01:16:32 Rep. Keane
01:16:41 Chair Ballance
01:16:46 Rep. Ellis
01:17:40 Sen. Olszewski

Closing by Sponsor:

01:19:59 Sen. Olszewski

01:20:58 Chair Ballance
01:22:08 Vice Chair McCarthy
01:22:21 Chair Ballance
01:23:09 Vice Chair McCarthy
01:23:31 Chair Ballance
01:23:37 Vice Chair Brodehl
01:23:45 Chair Ballance

01:23:59 Recessed
01:42:35 Reconvened - with Rep. Woods present

EXECUTIVE ACTION ON HB 60

01:43:03 **Motion/Vote:** Rep. Brodehl moved that **SB 60 BE CONCURRED IN**. Motion carried unanimously by voice vote. Rep. Burnett voted by proxy. Rep. Lynch will carry the bill.

EXECUTIVE ACTION ON HB 63

01:44:00 **Motion:** Rep. Brodehl moved that **SB 63 BE CONCURRED IN**.

01:44:02 **Motion/Vote:** Rep. Patelis moved that **SB 63 BE AMENDED**. Motion carried unanimously by voice vote. Rep. Burnett voted by proxy.

EXHIBIT(aph69a06)

01:47:00 **Motion/Vote:** Rep. Brodehl moved that **SB 63 BE CONCURRED IN AS AMENDED**. Motion carried unanimously by voice vote. Rep. Burnett voted by proxy. Rep. Patelis will carry the bill.

EXECUTIVE ACTION ON HB 64

01:47:29 **Motion:** Rep. Brodehl moved that **SB 64 BE CONCURRED IN**.

01:47:34 **Motion/Vote:** Rep. Brodehl moved that **SB 64 BE AMENDED**. Motion carried 21-1 by voice vote with Rep. Bartel voting no. Rep. Burnett voted by proxy.

EXHIBIT(aph69a07)

01:48:55 **Motion/Vote:** Rep. Brodehl moved that **SB 64 BE CONCURRED IN AS AMENDED**. Motion carried 21-1 by voice vote with Rep. Bartel voting no. Rep. Burnett voted by proxy. Rep. Brodehl will carry the bill.

EXECUTIVE ACTION ON HB 139

01:50:21 **Motion/Vote:** Rep. Brodehl moved that **SB 139 BE CONCURRED IN**. Motion carried 20-2 by voice vote with Rep. Lynch and Rep. Ryan voting no. Rep. Burnett voted by proxy. Rep. Jones will carry the bill.

EXECUTIVE ACTION ON HB 260

01:50:57 **Motion/Vote:** Rep. Brodehl moved that **SB 260 BE CONCURRED IN**. Motion carried unanimously by voice vote. Rep. Burnett voted by proxy. Rep. Cook will carry the bill.

EXECUTIVE ACTION ON HB 341

01:51:27 **Motion/Vote:** Rep. Brodehl moved that **SB 341 BE CONCURRED IN**. Motion carried unanimously by voice vote. Rep. Burnett voted by proxy. Rep. Jones will carry the bill.

01:52:16 Chair Ballance

ADJOURNMENT

Adjournment: 01:53:24

Sherri Row, Secretary

sr

Additional Documents:

EXHIBIT([aph69aad.pdf](#))

Amendments to Senate Bill No. 63
2nd Reading/2nd House Copy

Requested by Representative Jimmy Patelis

For the House Appropriations Committee

Prepared by Rachel Weiss
March 24, 2017 (9:12am)

1. Page 1, line 25.

Following: "exhaustion"

Insert: "and documentation in the offender's file"

2. Page 3, line 1.

Strike: "imprisonment"

Insert: "placement in a community corrections facility or program designated by the department for up to 9 months, including but not limited to placement in a prerelease center, sanction or hold bed, transitional living program, enhanced supervision program, relapse intervention bed, chemical dependency treatment, or 24/7 sobriety program"

3. Page 3, line 17.

Following: "exhausted"

Insert: "and documented in the offender's file"

4. Page 3, line 21.

Following: "exhausted"

Insert: "and documented in the offender's file"

5. Page 3, line 24.

Strike: "imprisonment" through "department"

Insert: "placement as provided in subsection (7)(a)(ii)"

6. Page 4, following line 1.

Insert: "(10) All sanction and placement decisions must be documented in the offender's file."

Renumber: subsequent subsections

7. Page 5, line 25.

Strike: "behavioral changes techniques"

Insert: "evidence-based practices"

8. Page 6, line 12.

Following: "individual"

Insert: "as determined by the individual's most recent risk and needs assessment"

9. Page 7, line 19.

Strike: "confinement."
Following: "monitoring"
Strike: "."
Following: "period;"
Strike: "or"

10. Page 7, line 19.

Insert: "(c) recommend placement in a community corrections facility or program for up to a 90-day period, including but not limited to placement in a prerelease center, sanction or hold bed, transitional living program, enhanced supervision program, relapse intervention bed, chemical dependency treatment, or 24/7 sobriety program; or"

Renumber: subsequent subsections

11. Page 7, following line 28.

Insert: "(6) All sanction and placement decisions must be documented in the offender's file."

12. Page 10, line 16.

Following: "(7)"

Insert: "(a)"

13. Page 10, line 17.

Following: "interventions grid."

Insert: "(b)"

Following: "The grid must"

Insert: ":(i)"

14. Page 10, line 19.

Following: "manner"

Strike: ". The grid must"

Insert: ":(ii)"

15. Page 10, line 21.

Strike: "(a)"

Insert: "(A)"

16. Page 10, line 22.

Strike: "(b)"

Insert: "(B)"

17. Page 10, line 23.

Strike: "(c)"

Insert: "(C)"

18. Page 10, line 24.

Strike: "(d)"

Insert: "(D)"

Following: "interventions;"

Strike: "and"

19. Page 10, line 25.

Strike: "(e)"

Insert: "(E)"

Following: "exhaust"

Insert: "and document"

Following: "process"

Insert: "; and (F) recommend the least restrictive placement for offenders based on the result of a validated risk and needs assessment. Placement decisions must be documented in the offender's file and must indicate any other less secure sanction options considered by the probation and parole officer before utilizing a higher level of custody"

20. Page 10, following line 26.

Insert: "(a) review the grid every 5 years to ensure it adheres to evidence-based practices and that use of sanctions and incentives by probation and parole officers is consistent across the state;"

Renumber: subsequent subsections

21. Page 10, line 28.

Following: "parole;"

Strike: "and"

22. Page 10, line 30.

Strike: "and"

Following: "detention center personnel"

Strike: " _ "

Insert: "contracted service providers, and other interested personnel;

(d) ensure the guidance and procedures established in the grid give consideration to community safety and the needs of the victim and offender;

(e) collect data relating to placement decisions based on the grid; and

(f) aggregate data collected and provide a report to the law and justice interim committee each biennium."

- END -

MINUTES

MONTANA SENATE 65th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 63

Call to Order: Chair Keith Regier, on April 12, 2017 at 3:00 P.M., in Room 350 Capitol

ROLL CALL

Members Present:

Sen. Keith Regier, Chair (R)
Rep. Randy Brodehl, Chair (R)
Rep. Kimberly Dudik (D)
Sen. Jedediah Hinkle (R)
Rep. Kenneth L. Holmlund (R)
Sen. Cynthia Wolken (D)

Members Excused: None

Members Absent: None

Staff Present: Rachel Weiss, Legislative Branch
Charlene Devine, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Executive Action: SB 63 - Be Amended

Recommend Adoption of the Free Conference Committee Report

00:00:03 Chair Regier

Discussion:

00:00:36 Sen. Wolken
00:01:14 Rachel Weiss , Legislative Services Division
00:02:16 Rep. Brodehl
00:02:28 Kevin Olson, Department of Corrections
00:02:46 Rep . Dudik
00:03:18 Sen. Wolken
00:03:56 Rep. Brodehl
00:04:09 Sen. Wolken
00:04:15 Rep. Holmlund
00:04:23 Sen. Wolken
00:04:30 Chair Regier

00:04:47 **Motion/Vote:** Sen. Wolken moved that **HR 63 BE AMENDED**. Motion carried unanimously by voice vote in both the House and the Senate.

EXHIBIT(frs77sb0063a01)

00:05:14 **Motion/Vote:** Sen. Wolken moved **ADOPTION OF THE FREE CONFERENCE COMMITTEE REPORT**. Motion carried unanimously by voice vote in both the House and the Senate.

ADJOURNMENT

Adjournment: 3:20 PM

Charlene Devine, Secretary

Additional Documents:

EXHIBIT([frs77sb0063aad.pdf](#))

Requested by Senator Cynthia Wolken

For the Senate Free Conference Committee

Prepared by Rachel Weiss
April 12, 2017 (1:23pm)

1. Title, page 1, line 15.

Following: "DEFINITIONS;"

Strike: "AND"

2. Title, page 1, line 16.

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 3, line 2.

Following: "PLACEMENT IN"

Insert: ": (A) a secure facility designated by the department for
up to 9 months; or
(B) "

4. Page 11, line 30.

Insert: "NEW SECTION. Section 6. {standard} Effective date.

[This act] is effective on passage and approval."

- END -

1 SENATE BILL NO. 63

2 INTRODUCED BY C. WOLKEN

3 BY REQUEST OF THE COMMISSION ON SENTENCING

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO SUPERVISION OF
6 PROBATIONERS AND OF DEFENDANTS SERVING A DEFERRED OR SUSPENDED SENTENCE;
7 REVISING THE PROCESS TO REVOKE A DEFERRED OR SUSPENDED SENTENCE FOR VIOLATIONS
8 OF CONDITIONS; ALLOWING A PROBATION AND PAROLE OFFICER TO FILE A PETITION TO
9 TERMINATE THE TIME REMAINING ON A DEFERRED OR SUSPENDED SENTENCE; CREATING A
10 DEADLINE AFTER WHICH THE DEFERRED OR SUSPENDED SENTENCE IS TERMINATED; CREATING
11 A SCHEDULE FOR CONDITIONAL DISCHARGE RECOMMENDATIONS FOR PROBATIONERS;
12 REVISING PROCEDURES FOR AN INFORMAL PROBATION VIOLATION HEARING; REQUIRING THE
13 DEPARTMENT OF CORRECTIONS TO IMPLEMENT AN INCENTIVES AND INTERVENTIONS GRID;
14 REQUIRING THE DEPARTMENT TO PROVIDE TRAINING RELATED TO THE INCENTIVES AND
15 INTERVENTIONS GRID; PROVIDING DEFINITIONS; **AND** AMENDING SECTIONS 46-18-203, 46-18-208,
16 46-23-1011, 46-23-1015, AND 53-1-203, MCA; **AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.**"

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19
20 **Section 1.** Section 46-18-203 , MCA, is amended to read:

21 **"46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for
22 revocation showing probable cause that the offender has violated any condition of a sentence, any condition
23 of a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed
24 pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), and
25 describing the exhaustion AND DOCUMENTATION IN THE OFFENDER'S FILE of appropriate violation responses
26 according to the incentives and interventions grid adopted under 53-1-203, the judge may issue an order for a
27 hearing on revocation. The order must require the offender to appear at a specified time and place for the
28 hearing and be served by delivering a copy of the petition and order to the offender personally. The judge
29 may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the
30 offender and bring the offender before the court.

31 (2) The petition for a revocation must be filed with the sentencing court either before the period of

1 suspension or deferral has begun or during the period of suspension or deferral but not after the period has
2 expired. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court
3 of its jurisdiction to rule on the petition.

4 (3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons
5 arrested pursuant to this section.

6 (4) Without unnecessary delay and no more than 60 days after arrest, the offender must be brought
7 before the judge, and at least 10 days prior to the hearing the offender must be advised of:

- 8 (a) the allegations of the petition;
9 (b) the opportunity to appear and to present evidence in the offender's own behalf;
10 (c) the opportunity to question adverse witnesses; and
11 (d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8,
12 part 1.

13 (5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or
14 conditions of the sentence can be modified unless:

- 15 (a) the offender admits the allegations and waives the right to a hearing; or
16 (b) the relief to be granted is favorable to the offender and the prosecutor, after having been given
17 notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the
18 term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

19 (6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there
20 has been a violation of:

- 21 (i) the terms and conditions of the suspended or deferred sentence; or
22 (ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4),
23 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4).

24 (b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse
25 the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure
26 on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments
27 as ordered.

28 (7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or
29 deferred sentence and the violation is not a compliance violation, the judge may:

1 (i) continue the suspended or deferred sentence without a change in conditions;

2 (ii) continue the suspended sentence with modified or additional terms and conditions, which may
3 include PLACEMENT IN:

4 (A) A SECURE FACILITY DESIGNATED BY THE DEPARTMENT FOR UP TO 9 MONTHS; OR imprisonment for up to
5 9 months in a facility designated by the department

6 (B) A COMMUNITY CORRECTIONS FACILITY OR PROGRAM DESIGNATED BY THE DEPARTMENT FOR UP TO 9
7 MONTHS, INCLUDING BUT NOT LIMITED TO PLACEMENT IN A PRERELEASE CENTER, SANCTION OR HOLD BED,
8 TRANSITIONAL LIVING PROGRAM, ENHANCED SUPERVISION PROGRAM, RELAPSE INTERVENTION BED, CHEMICAL
9 DEPENDENCY TREATMENT, OR 24/7 SOBRIETY PROGRAM;

10 (iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed
11 or any sentence that could have been imposed that does not include a longer imprisonment or commitment
12 term than the original sentence; or

13 (iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

14 (b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time,
15 consult the records and recollection of the probation and parole officer, and either expressly allow all or part of
16 the elapsed time served without any record or recollection of violations as a credit against the sentence or
17 reject all or part of the time as a credit. The If the judge determines that elapsed time should not be credited,
18 the judge shall state the reasons for the judge's determination in the order. Credit must be allowed for time
19 served in a detention center or for home arrest time already served.

20 (c) If a the judge finds that an the offender has not violated a term or condition of a suspended or
21 deferred sentence, that the judge is not prevented from setting, modifying, or adding conditions of probation
22 as provided in 46-23-1011.

23 (8) (a) If EXCEPT AS PROVIDED IN SUBSECTION (8)(C), IF the judge finds that the offender has violated
24 the terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation,
25 and that the appropriate violation responses under the incentives and interventions grid have not been
26 exhausted AND DOCUMENTED IN THE OFFENDER'S FILE, the judge shall notify the department and refer the matter
27 back to the hearings officer.

28 (b) If EXCEPT AS PROVIDED IN SUBSECTION (8)(C), IF the judge finds that the offender has violated the
29 terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and

1 that the appropriate violation responses under the incentives and interventions grid have been exhausted AND
2 DOCUMENTED IN THE OFFENDER'S FILE, the judge may:

3 (i) continue the suspended or deferred sentence without a change in conditions; or
4 (ii) continue the suspended or deferred sentence with modified or additional terms and conditions,
5 which may include imprisonment for up to 9 months in a facility designated by the department PLACEMENT AS
6 PROVIDED IN SUBSECTION (7)(A)(II).

7 (C) IF THE JUDGE FINDS THAT THE OFFENDER HAS VIOLATED THE TERMS AND CONDITIONS OF THE
8 SUSPENDED OR DEFERRED SENTENCE, THAT THE VIOLATION IS A COMPLIANCE VIOLATION, AND THAT THE OFFENDER'S
9 CONDUCT INDICATES THAT THE OFFENDER WILL NOT BE RESPONSIVE TO FURTHER EFFORTS UNDER THE INCENTIVES
10 AND INTERVENTIONS GRID, THE JUDGE MAY SENTENCE THE OFFENDER AS PROVIDED IN SUBSECTION (7).

11 (8)(9) If the judge finds that the prosecution has not proved, by a preponderance of the evidence,
12 that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition
13 must be dismissed and the offender, if in custody, must be immediately released.

14 (10) ALL SANCTION AND PLACEMENT DECISIONS MUST BE DOCUMENTED IN THE OFFENDER'S FILE.

15 (10)(11) As used in this section, the following definitions apply:

16 (a) "Absconding" means when an offender deliberately makes the offender's whereabouts unknown
17 to a probation and parole officer or fails to report for the purposes of avoiding supervision, and reasonable
18 efforts by the probation and parole officer to locate the offender have been unsuccessful.

19 (b) "Compliance violation" means a violation of the conditions of supervision that is not:

20 (i) a new criminal offense;

21 (ii) possession of a firearm in violation of a condition of probation;

22 (iii) behavior by the offender or any person acting at the offender's direction that could be considered
23 stalking, harassing, or threatening the victim of the offense or a member of the victim's immediate family or
24 support network; or

25 (iv) absconding; OR

26 (V) FAILURE TO ENROLL IN OR COMPLETE A REQUIRED SEX OFFENDER TREATMENT PROGRAM OR A
27 TREATMENT PROGRAM DESIGNED TO TREAT VIOLENT OFFENDERS.

28 (9)(14)(12) The provisions of this section apply to any offender whose suspended or deferred
29 sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the

1 terms and conditions of the offender's original sentence."

2
3 **Section 2.** Section 46-18-208 , MCA, is amended to read:

4 **"46-18-208. Termination of remaining portion of deferred or suspended sentence -- petition.**

5 (1) When imposition of a sentence has been deferred or execution of a sentence has been suspended, the
6 prosecutor, ~~or the defendant, or the defendant's probation and parole officer~~ may file a petition to terminate
7 the time remaining on the sentence if:

8 (a) in the case of a deferred imposition of sentence, the defendant has served 2 years or one-half of
9 the sentence, whichever is less, and has demonstrated compliance with supervision requirements; or

10 (b) in the case of a suspended sentence:

11 (i) the defendant has served 3 years or two-thirds of the time suspended, whichever is less; and

12 (ii) the defendant has been granted a conditional discharge from supervision under 46-23-1011 and
13 has demonstrated compliance with the conditional discharge for a minimum of 12 months.

14 (2) The court may hold a hearing on the petition on its own motion or ~~upon~~ on request of the
15 prosecutor or the defendant. Unless the court requires a hearing, the remaining portion of the deferred or
16 suspended sentence is terminated 30 days after the petition is filed.

17 (3) ~~The~~ If the court requires a hearing on the petition, the court may grant the petition if it finds that:

18 (a) termination of the remainder of the sentence is in the best interests of the defendant and society;

19 (b) termination of the remainder of the sentence will not present an unreasonable risk of danger to
20 the victim of the offense; and

21 (c) the defendant has paid all restitution and court-ordered financial obligations in full."
22

23 **Section 3.** Section 46-23-1011 , MCA, is amended to read:

24 **"46-23-1011. Supervision on probation.** (1) The department shall supervise probationers during
25 their probation period, including supervision after release from imprisonment imposed pursuant to
26 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), in accord with the
27 conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of
28 sentencing, the court shall, at the request of the department, hold a hearing and set conditions of probation.
29 The probationer must be present at the hearing. The probationer has the right to counsel as provided in

1 ~~(e)~~(E) exhaust AND DOCUMENT violations responses before initiating the revocation process; AND
2 (F) RECOMMEND THE LEAST RESTRICTIVE PLACEMENT FOR OFFENDERS BASED ON THE RESULT OF A
3 VALIDATED RISK AND NEEDS ASSESSMENT. PLACEMENT DECISIONS MUST BE DOCUMENTED IN THE OFFENDER'S FILE
4 AND MUST INDICATE ANY OTHER LESS SECURE SANCTION OPTIONS CONSIDERED BY THE PROBATION AND PAROLE
5 OFFICER BEFORE UTILIZING A HIGHER LEVEL OF CUSTODY.

6 (8) The department shall:

7 (A) REVIEW THE GRID EVERY 5 YEARS TO ENSURE IT ADHERES TO EVIDENCE-BASED PRACTICES AND THAT
8 USE OF SANCTIONS AND INCENTIVES BY PROBATION AND PAROLE OFFICERS IS CONSISTENT ACROSS THE STATE;

9 ~~(a)~~(B) provide information and training on the grid for probation and parole officers and supervisors
10 and for members and staff of the board of pardons and parole; and

11 ~~(b)~~(C) offer information and training on the grid to district court judges, prosecution and defense
12 attorneys, law enforcement personnel, and county detention center personnel, CONTRACTED SERVICE
13 PROVIDERS, AND OTHER INTERESTED PERSONNEL;

14 (D) ENSURE THE GUIDANCE AND PROCEDURES ESTABLISHED IN THE GRID GIVE CONSIDERATION TO
15 COMMUNITY SAFETY AND THE NEEDS OF THE VICTIM AND OFFENDER;

16 (E) COLLECT DATA RELATING TO PLACEMENT DECISIONS BASED ON THE GRID; AND

17 (F) AGGREGATE DATA COLLECTED AND PROVIDE A REPORT TO THE LAW AND JUSTICE INTERIM COMMITTEE
18 EACH BIENNIUM."

19
20 NEW SECTION. SECTION 6. {STANDARD} EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND
21 APPROVAL.

22 - END -